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HANDBOOK ON COMPANIES

WITH

Appendix of Forms

FOR

**SHAREHOLDERS, DIRECTORS, BONDHOLDERS, CORPORATION OFFICIALS, BROKERS, BOND DEALERS,
SOLICITORS, AUTHORIZED TRUSTEES AND LIQUIDATORS.**

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TORONTO:

THE CARSWELL COMPANY, LIMITED

1922

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1922

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PREFACE

The companies incorporated in Canada in 1921 alone represent a total share capital exceeding \$850,000,000. When it is considered that most of the larger corporations secure a portion of the capital they require by public issues of bonds or other securities, some idea can be formed of the vast amount of money invested by the public in commercial corporations.

While persons without legal training cannot hope to master all the details of the law relating to companies in the different jurisdictions in Canada, it is important that those who invest their money in the shares or bonds of companies should have at least a general acquaintance with their rights and liabilities. Even a slight knowledge may put an investor on his guard and save him from serious loss and disappointment. It is important that directors and corporation officials should be familiar with the principal legal provisions relating to their own duties and liabilities and those of their companies. They will then be in a position to know when they ought to consult their legal advisers, whose services this book is in no wise intended to supplant.

While it is primarily intended for directors, shareholders and bondholders, it is hoped that this

book will also be useful to lawyers and all who are interested in company law, including brokers, bond-dealers and authorized trustees.

Chapters I to XX, XXIV and the Appendix of Forms are the work of Mr. Fraser. Chapters XXI to XXIII are the work of Mr. Macdonnell, who has also compiled the Tables of Fees and the Index.

In order to avoid technicalities, the authors have not quoted decided cases which those who are interested in pursuing the subject further may find in the standard text-books on Company Law. The authors have endeavoured to incorporate all statutory amendments up to the end of the 1922 sessions of the various legislatures.

The references to "Company Law" and "Forms" are respectively to the second edition of Masten and Fraser on Company Law and Canadian Company Forms and Precedents by W. K. Fraser.

120 Bay Street, Toronto.

August 1, 1922.

W. K. F.

H. W. MACD.

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NOTE

Each province in Canada has a Companies Act of its own, under which companies may be incorporated, and there is also a Dominion Companies Act, under which companies may be formed with power to carry on business throughout the Dominion. A company is governed by the provisions of the Act under which it is incorporated. Unless otherwise specified, the references to the legislation in the various jurisdictions, *eg.*: "Dominion (s.s. 5-13); Ontario (s.s. 3-8)," are to the sections of the Companies Act of the jurisdiction indicated. Pamphlet copies of the Dominion Act can be got from the Department of the Secretary of State at Ottawa; and copies of the various Provincial Companies Acts from the Provincial Secretary or Registrar of Companies in the Provincial capital.

HANDBOOK ON COMPANIES

CHAPTER I.

INCORPORATION.

Nature and characteristics of companies.

In this work only one of the different classes of incorporated bodies will be dealt with, viz., limited companies with a capital divided into shares, incorporated under the Companies Act of the Dominion or of one of the provinces. These constitute by far the most numerous and important class of companies carrying on commercial undertakings in Canada. Such companies are described as “companies limited by shares” or “companies with share capital” or “joint stock companies,” and are to be distinguished from companies without share capital, corporations, companies limited by guarantee and unlimited companies. Accordingly, wherever the word “company” is used hereafter it is intended to refer to an incorporated body, with a capital divided into *shares*, which are held by the company’s *members* or *shareholders* whose liability is *limited* by the amount of the capital for which they have subscribed.

A company, unlike a partnership, is an entity legally separate and distinct from its individual members or shareholders. The shareholder may transfer his shares to others under certain prescribed conditions, thereby causing himself to cease to be, and his transferee to become, a shareholder. The amount of share capital which the shareholder agrees to take is

the measure of his liability to the company and its creditors. This privilege of limited liability is one of the outstanding advantages conferred by incorporation. Among other advantages of incorporation is the control which the shareholders can exercise over those who manage the company's undertaking, viz., the directors. The latter are special agents and have only such powers as are given them by the governing statute and the regulations of the company. Other characteristic advantages enjoyed by companies are the facilities they possess for obtaining capital by the issue of bonds and preference shares and for effecting combinations and amalgamations. The fact that the company possesses an existence separate from and independent of its members enables it to contract with the latter. The death, bankruptcy or lunacy of a member does not interfere with the continued existence of the company as it does in the case of a partnership. Shares or securities in a prosperous company may be an asset of commercial value which can be used in any other enterprise in which the owner is engaged.

Among the external characteristics of a company are the following:—It has a name of which the word “limited” forms a part; it has a corporate seal on which the name is engraved; it has a charter or memorandum of association in which among other things the name, objects, capital and number of shares into which it is divided are set forth; it has regulations consisting of by-laws or articles of association.

Incorporation.

Apart from incorporation by special legislative Act, a mode which is not here considered, incorpora-

tion is obtained in Canada by following the procedure required by the particular Companies Act under which incorporation is sought and by paying the required departmental fee. Each province has a Companies Act of its own under which companies may be incorporated and there is also a Dominion Companies Act, under which companies may be incorporated with power to carry on business throughout the Dominion. A province, on the other hand, can only confer, on companies incorporated by it, actual powers and rights exercisable within the province; if the company carries on business in another province it must get the right to do so from the latter. This it can do by taking out a license or becoming registered and paying the license or registration fee required.

Where to incorporate.

If the company's activities are to be confined to one province, it is usually advisable and cheaper to obtain incorporation in that province. If the company proposes to carry on business throughout the Dominion or in several provinces or in foreign countries, incorporation under the Dominion Act is advisable. If the company's business is primarily provincial but its operations may extend further, the jurisdiction under which to incorporate is a matter of choice, largely to be determined by a computation of the relative incorporation and license fees and taxation. Tables of incorporation and license fees are given at p. 355. It has been held that a Dominion company need not take out a license as a condition precedent to doing business in Ontario and Manitoba, and the same is probably true under similar legislation in other provinces. In Quebec and

Alberta a Dominion company is not required to take out a license to do business. In Saskatchewan a Dominion company is required to become registered but need not take out a license. If, however, a Dominion company proposes to hold land in any province it must comply with the local requirements, if any, as to obtaining a license in mortmain.

Procedure for obtaining incorporation.

Two modes of incorporation are in vogue in Canada, viz., by letters patent, or by certificate of incorporation issued by the Registrar of Companies upon the filing of a memorandum and articles of association. In the following jurisdictions incorporation takes place by letters patent granting a charter of incorporation:—

Dominion (ss. 5-13).

Ontario (ss. 3-8; 17-22).

Quebec (arts. 5961-5967a; 6748).

Manitoba (ss. 4-16).

New Brunswick (ss. 5-14).

The application for letters patent must be by formal petition executed by at least five (Quebec and New Brunswick—three) petitioners, each of the full age of twenty-one years. Forms of petition and accompanying documents and pamphlets setting out the procedure are obtainable gratis from the Department of the Secretary of State of Canada, at Ottawa, for Dominion companies, or from the Department of the Provincial Secretary in the provincial capital for provincial companies. For statutory forms see Forms, pp. 630 ff.

The following is an outline of the requirements under the Dominion Act. The requirements in the

different provinces are similar, with some slight modifications.

An application for incorporation must be prepared, signed and filed with the department. The application must set out:—

(a) The proposed corporate name of the company, which shall not be that of any other known company incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise, on public grounds, objectionable, s. 7 (a). It is always advisable before forwarding the application to make inquiry from the department whether the proposed name is acceptable. It is also advisable that the name be as short as possible. "If the name of the proposed company is that of an existing partnership, there must be a written consent to the use of the name, signed by all the members of the partnership, duly verified, and accompanied by an affidavit that the signatories are all the members of the partnership. If the proposed name contains the names of individuals who are not applicants for incorporation, written consents, verified by affidavits of execution, of all such persons should be filed." (Departmental regulations.) If the proposed name is that of an incorporated company, a by-law of the directors of such company authorizing the application and undertaking that no further business operations will be carried on by the company, and that the letters patent of the existing company will be surrendered forthwith, must be filed. If the corporation is defunct the affidavit should show it.

Certain names will not be granted, e.g., names including the word "Imperial," or other titles signifying royal or government support or patronage, such as "Crown," "King's," etc.

(b) The objects for which the company is to be incorporated:—

Great care and the services of a competent solicitor are requisite in drafting the objects of the company, as these can only be changed subsequently by supplementary letters patent. In addition to specific objects, experience has shewn that a number of general clauses and powers should be inserted. See further Company Law, p. 36, and, for examples, Forms, pp. 338 ff.

(c) The place within Canada where the head office of the company is to be situate. If the head office is in a township or district, the post office address should be given.

(d) The proposed amount of the capital of the company, the number of shares, and the amount of each share.

If it is desired that the provisions relating to the issue of preference shares should appear in the letters patent, they ought to be set out in the petition. (See further p. 85):—

Shares of no nominal or par value:—

The Acts of the Dominion, New Brunswick and Quebec provide for shares without nominal or par value. Such shares may be issued for such consideration as the letters patent prescribe, or as may be fixed by the directors pursuant to authority conferred in the letters patent, or if the letters patent do not so provide, then by the consent of two-thirds of each class of shares then outstanding given at a meeting called for that purpose in such manner as is prescribed by the by-laws. Where shares of no nominal or par value are authorized, the letters patent must set out the amount of capital with which the company will carry on business; this necessitates stating it in the petition.

The amount (which must not be less than \$500) is to be determined as follows:—If there are no preferred shares with a preference as to principal, it is a sum equivalent to \$5 or some multiple of \$5 for every share authorized to be issued. If preferred shares with a preference as to principal are provided for, the nominal amount of such preferred shares must be added.

(f) The names (in full, not initials), address and calling of each of the applicants; the names of the applicants, not less than three—Dominion and New Brunswick (and not more than fifteen)—who are to be the provisional directors of the company. The applicants must be of the full age of twenty-one.

(g) The number of shares taken by each applicant.

It is usual for each applicant to subscribe for one share and that no payment should be made thereon before incorporation.

The petition must be signed by each of the applicants and the facts therein stated verified by affidavit of one of the applicants. Signatures by attorney (if any) must be made under specific power of attorney duly executed and verified. The original power of attorney or an authenticated notarial copy thereof must be produced with the petition. The application must be accompanied by a memorandum of agreement and stock book *in duplicate* under seal. For the requirements in Manitoba see section 7 of the Manitoba Act. Signatures to the memorandum of agreement and stock book and the petition must be verified by statutory declaration or affidavit of the subscribing witness, who must not be one of the applicants. If the application asks for special provisions in the letters patent, e.g., regarding preference shares, and the

signatories of the memorandum of agreement are more numerous than the signatories of the petition, the memorandum of agreement should contain the special provisions asked for in the petition. If incorporation as a "private" company is desired (see p. 76, below) a clause should be added to the application stating that incorporation as a private company is sought and setting out the restriction on the transferability of shares which it is desired to have incorporated in the letters patent. The restrictions should also be set out in the memorandum of agreement and stock book.

Fees.

The application for incorporation must be accompanied by the proper fee according to the tariff. Tariffs, which are based on the authorized capital are given below at pp. 355 ff. If the application is in order, after it has been approved by the department, letters patent are issued incorporating the company as of the date of the letters patent. It is wise carefully to compare the terms of the letters patent with the petition.

Quebec mining companies.

Article 6748 (1) of the Quebec Mining Companies Act provides in part as follows:—

, If applied for in the petition for the incorporation of the company or for supplementary letters patent, it shall be stated in the letters patent that the shareholders incur no personal responsibility in excess of the amount of the price paid or agreed to be paid to the company for its shares.

Manitoba mining companies.

Section 4 of the Mining Companies Act, R.S.M., c. 129, provides that, where application is made

under the Act for incorporation of any company for mining purposes, the letters patent may, if the petition of the applicants so requires, contain a provision that no liability beyond the amount actually paid upon stock in such company by the subscribers thereto or holders thereof shall attach to such subscriber or holder.

Ontario.

The procedure is fully outlined in the departmental instructions which are set out below.

If it is desired to hold meetings of shareholders, directors and executive committee of directors (if any) out of Ontario; fix the quorum of directors at less than a majority of the board; pay a commission on the issue of shares to the public; or issue share warrants, these matters must be covered in the petition (see Forms p. 359). Where incorporation as a private company is desired, the procedure above indicated as to Dominion companies may be followed. If the applicants desire that Part XI of the Act be made applicable to a mining company the necessary words to that effect must be added to the prayer of the petition. Part XI permits the issue of shares at a discount (see p. 112, below). The objects of such a company, i.e., a company "without personal liability," will be expressed in set terms, a copy of which will be supplied by the department on request.

Departmental instructions.

INCORPORATION OF COMPANIES WITH SHARE CAPITAL.

1. The application for Letters Patent must be by a formal petition, duly executed, with at least two signatures on the page containing the prayer.

2. There must be at least FIVE PETITIONERS.

3. There must be a memorandum of agreement, in duplicate, duly executed under seal by at least the five petitioners with, at least, two signatures on the page or sheet containing the undertaking.

An agreement made up of two sheets of paper, the one setting forth the undertaking by itself, and the other carrying all the signatures by themselves, will not be accepted.

Such agreement should conform, in its essential features, to the form contained in the schedule to The Ontario Companies Act.

4. The petition, which may be submitted at any time without *Gazette* notice, must state:

(a) The proposed name of the company.

Such proposed name must not contain the words "Loan," "Mortgage," "Trust," "Investment" or "Guarantee" in combination or connection with any of the words "Corporation," "Company," "Association" or "Society" or in combination or connection with any similar collective term, nor the word "Imperial" or other title signifying Royal or Government support or patronage, such as "Crown," "King's," "Queen's," etc., unless there is some real Imperial Crown connection which gives a well-founded claim to recognition, or unless it can be shown on clear evidence that there is a long and *bona fide* user, and that the name is so used as not to convey any suggestion of Government support or patronage;

It is the policy of the Department not to grant names of which the words "Merger," "Amalgamated," "Extension," etc., form a part, unless sufficient evidence is filed to show that the undertaking of the proposed company is a *bona fide* merger, amalgamation or extension or as the case may be;

Evidence must be filed that the name is not objectionable upon any public ground and is not that of any known corporation or association incorporated or unincorporated, or of any partnership or of any individual, or any name under which any known business is being carried on, or so nearly resembling the same as to be calculated to deceive;

If the proposed corporate name is that of an existing firm or partnership whose undertaking is to be taken over by the Company a consent to the use of the name, signed by all the members of the firm or partnership, with the execution thereof verified by the affidavit or statutory declaration of a subscribing witness, and an

affidavit or declaration that the signatories comprise all the members of the firm or partnership, should be filed;

If the proposed corporate name is that of an incorporated company, a by-law of the directors of such company authorizing the application and undertaking that no further business operations will be carried on by the company and that the Letters Patent of the existing company will be surrendered forthwith, must be filed;

If the name of the proposed company includes that of an individual, a verified consent of that individual should accompany the application.

- (b) The objects for which the company is to be incorporated:

Sections 23 and 24 of The Ontario Companies Act provide wide incidental and ancillary powers. These have been drawn without change from Palmer's Precedents and have been made as wide as possible for the purpose of avoiding repeating them in the Letters Patent; such clauses, therefore, should not be repeated in an application for Letters Patent, nor should variations of them be inserted. There is, however, no objection to other clauses which are not provided and the insertion of which may be required;

- (c) The place within Ontario where the head office of the company is to be situate;

If the head office of the company is to be situate in a Township or District the Post Office address of company should also be given;

- (d) The amount of the capital of the company, the number of shares and the amount of each share;
- (e) If it is desired to create preference shares by Letters Patent, the complete terms in regard to the preference issue should be inserted in the petition and also in the Memorandum of Agreement and Stock Book;
- (f) The name in full, the place of residence and the calling of each of the applicants;

The word "Clerk" must not be used except to describe a clerk in Holy Orders, the Department of the Honourable the Attorney-General having ruled that the word may be used for this purpose only;

- (g) The names of the applicants, not less than three, who are to be the provisional directors of the company;
- (h) The number of shares for which each applicant has subscribed in the Memorandum of Agreement and Stock Book;
- (i) That no public or private interest will be prejudicially affected by the incorporation, if such be the fact.

5. If the applicants desire the insertion of special clauses in the Letters Patent, such special clauses must be set out in the petition.

6. Special conditions regarding preference shares or otherwise intended to have a bearing upon the shares of the company, or the manner in which they, or any portion thereof, shall or may be subscribed for, must be inserted in the petition and in the Memorandum of Agreement and Stock Book, as material parts thereof.

7. If the applicants desire that the company shall be incorporated as a Private Company, the conditions governing the restriction of the transfer of shares must be inserted in the petition and in the Memorandum of Agreement and Stock Book. It will, however, be sufficient if the Memorandum of Agreement and Stock Book indicates that the company is to be incorporated as a Private Company by inserting the word "Private" before the word "company" without setting out the special conditions therein.

8. The facts in the petition contained must be verified by affidavit to be made by one of the applicants. Such affidavit should also state that each petitioner signing the petition is of the full age of twenty-one.

9. Signatures to the Memorandum of Agreement and Stock Books and petition must be verified by statutory declaration or affidavit of subscribing witness or witnesses.

10. Signatures should be the ordinary business signatures of the applicants and must be witnessed and proved by persons who are not petitioners or directly interested in the formation of the company.

11. Signatures by attorney must be made under a specific and general power, duly executed and verified.

12. Application forms can be obtained upon application to the Department of the Honourable the Provincial Secretary.

MINING COMPANIES.

- (a) If the petitioners for a mining company desire that Part XI of The Ontario Companies Act be made applicable, the necessary words to that effect must be added to the prayer of their petition;
- (b) The objects of a mining company to which Part XI of the Act is made applicable will be expressed in set terms, a copy of which will be supplied on request.

CO-OPERATIVE CORPORATIONS.

Where incorporation is desired under the provisions of Part XI A of The Ontario Companies Act, the word "Co-operative"

must form part of the name. In addition to the regular material for incorporation, it will be necessary, in order to show that the corporation is co-operative within the application of the said Part, to submit the proposed general by-laws of the corporation, which must conform to the provisions of the said Part.

PUBLIC UTILITY COMPANIES.

Applications for incorporation to operate or control any public utility or municipal franchise, etc., etc., within Part XII. of The Ontario Companies Act are required to file, in addition to the ordinary material, the following:

- (a) Evidence that the proposed capital is sufficient to carry out the objects for which the company is to be incorporated; that such capital has been subscribed or underwritten and that the applicants are likely to command public trust and confidence in the undertaking;

Such evidence should be in the form of an affidavit or statutory declaration;

- (b) A detailed description of the plant, works and intended operations of the company, and an estimate of their cost;

This description should be duly verified and in the case of telephone companies should state the number of instruments and poles, miles of wire, etc.;

A rough sketch showing the proposed operation of the company should also be submitted;

- (c) A copy of the by-laws of every municipality in which the company proposes to operate, duly certified by the Clerk of the Municipality under the corporate seal;
- (d) If the undertaking is to be carried on, or in so far as it is to be carried on, in territory without municipal organization, a report from the Minister of Lands, Forests and Mines, and an order of The Ontario Railway and Municipal Board approving of the undertaking;
- (e) If it is proposed that the company shall acquire any plant, works, undertaking, good-will, contract or other property or assets, a detailed statement of the nature and value thereof;

This statement should be duly verified.

TELEPHONE COMPANIES.

These Companies must also submit evidence that the municipal by-laws have been approved by The Ontario Railway and Municipal Board.

Powers of a telephone company are expressed in set terms, a copy of which will be supplied on request.

It is suggested that the par value of the shares of a telephone company be fixed at a small amount, *i.e.*, \$5 or \$10, as The Ontario Telephone Act reads that every member or partner of a company, association or partnership which is afterwards incorporated under The Ontario Companies Act shall have allotted to him shares in the new corporation to the value of his share or interest in the company, association or partnership at the date upon which the charter of incorporation is granted. If the interests of the different members of the association vary it might not be possible to observe this provision if the par value is fixed at a large amount.

Nova Scotia (ss. 8-12; 14; 18-26; 82).

Saskatchewan (ss. 5-10; 15-22; 88-89).

Alberta (ss. 5-20; 60).

British Columbia (ss. 17 ff. 65; 84).

Any three or more persons (British Columbia—any five or more persons, except in the case of a private company—see p. 77—when two persons will suffice) associated for any lawful purpose to which the authority of the legislature extends, with certain specified exceptions, may form a company, by subscribing their names to a memorandum of association and otherwise complying with the requirements of the Act in respect of registration.

The company comes into existence on the issuance by the Registrar of Joint Stock Companies of a certificate stating the name of the company, the date of incorporation and the fact that the company is limited. In British Columbia the certificate states further particulars. The certificate is conclusive evidence that the statutory requirements with respect to registration have been complied with. The procedure for obtaining incorporation is as follows:

The memorandum of association.

Blank forms of memorandum of association, which are substantially the same for each province,

are obtainable from the Registrar in the provincial capital. For statutory forms see Forms pp. 667 ff.

The memorandum must state the following:—

1. The name of the proposed company, with the addition of the word “Limited” as the last word of such name.

All the above Acts contain a provision with slight variations forbidding the use of the name of an existing company or so nearly resembling such name as to be calculated to deceive, except the name of a company in the course of being dissolved which testifies its consent in such manner as the Registrar requires. It is always advisable to make a preliminary enquiry from the Registrar whether the proposed name is available, and unobjectionable.

2. The place where the registered office of the company is proposed to be situated.

The registered office must be in the province of incorporation. This requirement has been eliminated from the Nova Scotia Act.

3. The objects of the company.

Great care is requisite in drafting the objects of the company, as these can only be changed with the sanction of the Court. In addition to the specific objects, experience has shown that a number of general clauses and powers should be inserted. See further Company Law, p. 36, and for examples Forms pp. 338 ff.

4. A declaration that the liability of the members is limited.

5. The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount.

The particulars required as to capital are, first, the authorized capital determined by those respon-

sible for the formation of the company to be requisite, e.g., \$100,000; secondly, the number of shares into which the authorized share capital is divided, e.g., 1,000 shares; thirdly, the nominal or par value of the shares, e.g., \$100 each. The usual par value of shares is \$100, \$10, \$5, or \$1, depending on the nature of the company; the lower par values being common in the case of, e.g., mining and oil companies. The shares may be divided into several classes, e.g., preference and common shares, but such division may be left to be dealt with in the articles of association (see further on preference shares pp. 83 ff., below).

(In Saskatchewan.—6. That the company does or does not intend to invite the public to subscribe for its shares or debentures.)

The memorandum of association must be signed by each subscriber, in the presence of a witness who must attest the signature. The subscriber must add his address and occupation, and each subscriber must take at least one share and write opposite his name the number of shares he takes. Shares subscribed for in the memorandum are payable in cash unless some other method of payment is subsequently agreed upon. Any person not under disability, e.g., not an infant, may be a subscriber. The memorandum need not be printed, though it is advisable that this be done where articles are filed. In British Columbia notice of the situation of the registered office of the company must be delivered to the Registrar with the memorandum (s. 81 (2); Form 9 in the second schedule to the Act).

The memorandum of association, when signed, must be delivered to the Registrar of Joint Stock Companies for filing accompanied by the proper fees.

For tariff of fees in the different provinces see p. 355, below.

In Nova Scotia a copy of the memorandum together with the original must be delivered to the Registrar.

Specially limited mining companies.

Special provisions are applicable to such companies in Saskatchewan, Alberta and British Columbia (see p. 118, below).

The articles of association.

Every company incorporated under the above Acts has regulations governing such matters as shares, calls on shares, transfer transmission and forfeiture of shares, meetings, votes of members, powers, duties, election remuneration and proceedings of directors, dividends, accounts, notices, etc. With respect to its regulations the company may adopt any one of three courses.

(1) On the formation of the company 'articles of association' containing a complete set of regulations may be drawn up and signed by the subscribers to the memorandum of association and filed with the Registrar of Companies along with the memorandum.

(2) The company may as an alternative not file any articles of association, in which event the statutory regulations appended as a schedule to the Act and known as "Table A" will apply. The statutory regulations are incomplete and unsatisfactory and it is preferable that articles of association complete in themselves and excluding "Table A" be filed.

(3) A third course is to file articles of association, not complete in themselves, but adopting in

part "Table A" and providing regulations which supplement, partially exclude or modify "Table A". This is allowable but is unsatisfactory and not advisable, though it is often done. The articles of association should be prepared with care and with a view to the special circumstances and needs of the company. Competent legal advice is indispensable. For a form of articles see Forms, p. 38.

The articles, which must be divided into paragraphs numbered consecutively, must be signed by each subscriber to the memorandum of association in the presence of a witness who must attest the signature. In Nova Scotia they must be printed; in the other provinces they may be typewritten. The articles, when executed, must be delivered to the Registrar of Companies together with the memorandum of association for registration.

The following additional requirements should be noted in the undermentioned jurisdictions:—

Saskatchewan (ss. 88, 89).

Alberta (s. 60).

British Columbia (s. 84).

The above Acts contain similar, but not identical, provisions imposing restrictions on the appointment and advertisement of directors. The Alberta section reads as follows:—

60. A person shall not be capable of being appointed director of a company by the articles of association and shall not be named as a director or proposed director of a company in any prospectus issued by or in behalf of the company unless before the registration of the articles or the publication of the prospectus (as the case may be) he has by himself or by his agent authorized in writing:

- (a) Signed and filed with the registrar a consent in writing to act as such director; and

- (b) Either signed the memorandum of association for a number of shares not less than his qualification if any or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares if any.

(2) On the application for registration of the memorandum and articles of association of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company and if this list contains the name of any person who has not so consented the applicant shall be liable on summary conviction to a fine not exceeding \$200.

(3) Provided that this section shall not apply to a company which does not issue any invitation to the public to subscribe for its shares or to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business. 1901, c. 20, s. 60.

The British Columbia section does not apply to a private company.

The Saskatchewan Act provides that s. 89, requiring delivery of a list of persons who have consented to be directors, shall not apply to a company which does not issue any invitation to the public to subscribe for its shares or debentures, or to a prospectus issued after two years from the date at which the company is entitled to commence business.

For form of consent to act as director and agreement to take qualification shares, see App. Forms 1 and 2.

Every member on request is entitled to receive a copy of the memorandum and articles on payment of fifty cents (Nova Scotia); twenty-five cents (Saskatchewan); one dollar (Alberta and British Columbia) or such less sum as the company may prescribe.

If the documents are in order and are accepted for filing the Registrar in due course issues his certificate that the company is incorporated and limited.

CHAPTER II.

PROCEEDINGS SUBSEQUENT TO
INCORPORATION.**Organization.****I. Companies incorporated by letters patent.**

Under the Dominion, Ontario, Quebec and New Brunswick Acts companies are incorporated by letters patent, by which the petitioners and any other persons who have become subscribers to the memorandum of agreement and persons who thereafter become shareholders are constituted a corporation. The letters patent declare the petitioners named as such to be the provisional directors of the company. It is the duty of the provisional directors, with the assistance of the other shareholders (if any), to take the necessary steps to organize the company, i.e., provide it with a board of permanent directors, pass by-laws, etc., so that the company can commence operations. As the provisional directors must be replaced by an equal number of permanent directors, there should be as many provisional directors named as there are to be members of the permanent board. The general procedure is the same in the following jurisdictions, subject to certain variations and additional details. Attention is drawn to these under the heading of the particular jurisdiction involved.

(1) *Dominion.**Manitoba.**Quebec.**New Brunswick.*

The procedure for organizing a company incorporated under the above Acts is as follows:—

1. A meeting of the provisional directors is called. These are usually clerks in the office of the company's solicitor. At this meeting the letters patent of the company are produced; the shares subscribed for in the memorandum of agreement are issued and paid in full. Notices are directed to be sent out for a shareholders' meeting called for the purpose of organizing the company, electing directors, approving general by-laws, a borrowing by-law and a by-law to permit the purchasing of shares in other companies and to transact such other business as may be desirable. As the only shareholders at this stage are the incorporators, these acknowledge in writing the receipt of the notice of the shareholders' meeting. Thus the necessity for sending out the notices is avoided.

2. The meeting of shareholders approves the proceedings of the provisional directors. The provisional directors are elected permanent directors, the election being by ballot. It must be remembered that the provisional directors must be replaced by the same number of permanent directors. The meeting then adjourns until after the meeting of the permanent directors, which is held forthwith to pass the by-laws.

3. The permanent directors meet, pass the by-laws, elect officers, approve the form of share certificate and corporate seal and then adjourn. For forms of general by-laws see Forms, pp. 216 ff. In connection with the by-law for the borrowing of money, which is usually passed at this meeting, it should be noted that most banks require a by-law in a special form approved by the bank. Accordingly it is advisable to ascertain the name of the bank with which the company proposes to conduct

its banking business and obtain a copy of the required form. It is a convenient practice to pass, in addition to the bank's form of by-law, a general borrowing by-law. See further on borrowing, p. 182, below.

If there is to be an issue of preference shares and the provisions relating to the preference shares have not been set out in the letters patent, a by-law creating the issue may be passed at this stage. See further on preference shares, p. 85, below.

4. The adjourned meeting of shareholders re-assembles, ratifies the by-laws and adjourns.

5. The permanent directors meet and resign in succession in favour of the persons who are to act as the actual and continuing directors of the company. Each director, as he resigns, transfers the share of stock held by him to his successor who takes his place on the board. The usual qualification of a director prescribed by the by-laws is the holding of one share, and it is accordingly unnecessary to allot further shares to the incoming directors in order to qualify them, unless the holding of more than one share is required. The new board appoints officers for the ensuing year. The meeting then adjourns. For forms of organization minutes see Forms, pp. 313 ff.

In some of the above jurisdictions there are statutory restrictions on the allotment of shares and commencement of business. These are dealt with at pp. 29, 34, below. In addition, the following details should be noted under the Dominion, Quebec and Manitoba Acts.

Dominion.

The by-laws should provide that the place of the principal office of the company is to be situated in a designated city or town and at such place therein as the directors may from time to time by resolution appoint. The directors should pass the necessary resolution and cause to be inserted in the *Canada Gazette* the notice required by s. 30 of the Act. The following form may be used:—

THE COMPANY, LIMITED.

Notice is hereby given that the principal office of The Company, Limited, is situate at room No. _____ on the _____ floor of the building known as "The _____ Building," No. _____ Street, in the City of _____.

.....

Secretary.

The first auditors of the company may be appointed by the directors and their remuneration fixed, or the appointment may be left to the first annual meeting of the shareholders (s. 94A). The provisions of s. 75 (2) must be complied with when the prospectus or a statement in lieu of a prospectus is filed. These provisions are as follows:—

(2) A person named as a director or proposed director in any prospectus, or in any notice in lieu of prospectus, issued by or on behalf of the company, shall not be capable of being appointed director of the company unless, at the time of the publication of the prospectus, he has by himself or by his agent authorized in writing,—

- (i) Signed and filed with the Secretary of State of Canada a consent in writing to act as such director; and,
- (ii) Either signed the petition for incorporation and memorandum of agreement and stock book for a number of shares not less than his qualification (if any) or signed and filed with the Secretary of State of Canada a contract in writing to take from the company and pay for his qualification shares (if any). 7-8 Geo. V. c. 25, s. 10.

For forms of consent to act as director and contract to take and pay for qualification shares, see App. Forms 3 and 4.

Quebec (arts. 6091-6097).

Within sixty days after commencing operations and business every incorporated company, carrying on any labour, trade or business in the province (except banks) must cause to be delivered to the prothonotary of the Superior Court in each district, or to the registrar of each registration division in which it carries on or intends to carry on its operations or business, a declaration made and signed by the president, when its chief office or principal place of business is in the province, or by its principal manager or chief agent in the province, when it has only branches or agencies therein. The declaration must state the name of the company, where and how it was incorporated, the date of incorporation and where its principal place of business within the province is situated. Whenever any change takes place in the name of the company, or in its principal place of business in the province, a declaration thereof must be made within sixty days.

Manitoba (s. 29a).

The Act contains the following provision:—

29A. Every company shall, within thirty days after it is organized, file with the Provincial Secretary a copy of its by-laws and a list of the names and residential addresses of its directors, together with a statement of the actual business address of the company, the whole certified by the secretary or some other officer of the company. If any change takes place in the business address of the company, it shall also send notice of such change to the Provincial Secretary within thirty days thereafter. 6 Geo. V. c. 20, s. 10.

(2) *Ontario.*

Under the Ontario Act, for the purpose of organization, companies may be classified as follows:—

i. Public companies which offer their shares, debentures or debenture stock to the public for subscription (public companies).

ii. Private companies (as to which see p. 76, below) and companies which do not offer their shares, debentures or debenture stock to the public for subscription.

For companies in class i the general procedure for preliminary organization outlined above at p. 20 may be followed, bearing in mind, however, that the company is not entitled to allot its shares or commence business until certain statutory requirements have been complied with. These are dealt with below at pp. 30 and 35.

As to companies in class ii the Act provides for the holding of a “first meeting” for the purpose of organization. The terms of the section, which provides for substantially the same procedure as has already been outlined at p. 21 with some additions, are as follows:—

43.—(1) The provisional directors of a private company or a company which does not offer shares, debentures or debenture stock to the public for subscription shall call a general meeting of the company to be held at a convenient place within six months from the date of the Letters Patent for the purpose of electing directors, appointing auditors, sanctioning the by-laws of the company, and transacting such other business as may be necessary to enable the company to carry on its undertaking, and shall, at least ten days before the day on which such meeting is to be held, give notice of such meeting by registered letter addressed to each shareholder, setting out in detail the business to be transacted and matters to be considered thereat.

(2) The provisional directors shall report to such meeting

(a) The number of shares subscribed;

(b) The names of the subscribers;

- (c) The amount paid thereon;
 - (d) All contracts entered into by or on behalf of the company;
 - (e) The amount of the preliminary expenses, and
 - (f) A financial statement of the affairs of the company signed by the auditors, if any.
- (3) If the meeting is not called by the provisional directors as aforesaid any three or more shareholders may call the meeting. 2 Geo. V. c. 31, s. 41; 8 Geo. V. c. 30, s. 28.

II. Companies incorporated by memorandum and articles of association.

Under the Nova Scotia, Saskatchewan, Alberta and British Columbia Acts the company is practically organized upon incorporation, by reason of having in its articles of association a complete code of regulations.

At the first meeting of directors it will be necessary to appoint officers, make regulations as to meetings of directors (unless these have been fully provided for in the articles), approve the form of share certificate and corporate seal. Resolutions of the members providing for the borrowing of money and a resolution of the board appointing the company's bankers will also have to be passed (see p. 184, below).

In Nova Scotia (s. 60), Saskatchewan (s. 71) and Alberta (s. 100), the situation of the registered office must be determined and notice thereof given to the registrar. For form see App. Form 5.

In British Columbia (s. 81 (2)) the notice must be delivered to the registrar with the memorandum. The form is form 9 in the second schedule to the Act.

In Saskatchewan, Alberta and British Columbia there are statutory restrictions on the allotment of shares and the commencement of business (see pp. 30, 38, below).

In Saskatchewan the company will have to take out a license to carry on its business (see p. 38, below).

Vendors' agreements and further matters incidental to organization.

No matter what business the company proposes to carry on, the acquisition of certain assets immediately upon incorporation is usually contemplated, e.g., mines or mining claims in the case of a mining company; lands, plant, patent rights, etc., in the case of a manufacturing company.

An agreement for the purchase of such assets, commonly called a vendors' agreement or preliminary agreement, will be entered into between the vendor and the company or between the vendor and a trustee for the proposed company before its incorporation. If the latter course is followed, the agreement will have to be adopted by the company after its incorporation by a distinctly new contract, for the company cannot be bound by a contract made before it comes into existence by some one purporting to act on its behalf. Such contracts commonly provide that a portion or the whole of the consideration payable by the company shall consist of shares of the company issued to the vendor or his nominees as fully paid up. For a simple form of such agreement see App. Form 6.

In the case of companies incorporated by letters patent a by-law should be passed by the directors authorizing the purchase and the contract should be approved by the directors. The by-law should provide for its submission to the shareholders for ratification, the execution of the contract under the corporate seal by the proper officers and the payment of the consideration and the allotment of shares

(where such form a part of the consideration) on confirmation of the by-law by the shareholders and the execution and delivery of the conveyances or transfers of the property to be acquired. In some jurisdictions the allotment of shares cannot be made without complying with further formalities. These are dealt with below under "Restrictions on allotment and commencement of business." In Ontario if the company pays for property acquired by issuing paid-up shares there is the further requirement of authorization by a vote of shareholders present or represented by proxy at a general meeting duly called for considering the matter and holding not less than two-thirds of the issued capital stock represented at the meeting (s. 25). In practice the contract is approved in the organization stage by the holders of all the issued capital stock.

In the case of companies incorporated by memorandum of association (i.e., Nova Scotia, Saskatchewan, Alberta and British Columbia companies) the contract will be authorized by resolution of the directors and confirmed by the members.

In all jurisdictions if any director is interested in the sale to the company he must make full disclosure of his interest and refrain from voting, and it is important that the by-laws or articles, as the case may be, should be properly framed so as to protect a director contracting with the company who makes disclosure and does not vote. If there is to be a public issue of shares or securities the interest of the directors must also be disclosed in the prospectus. See further "Directors" at p. 157 and "Prospectus" at p. 52.

If the company's shares or securities are to be sold to the public through a broker or underwriter, the execution of a formal agreement for that purpose

should be authorized. See "Underwriting" at p. 70. Where extensive dealing in the company's shares is anticipated, a registrar and transfer agent should be appointed. For the requirements of the registrar and transfer agent see Company Law, p. 349.

It is also important that a proper system of accounting be adopted and it is generally advisable to have a set of books opened by a reputable firm of chartered accountants. As to the books required to be kept by the company, see "Books" at p. 217, below.

Restrictions on allotment and commencement of business.

In most, but not all, jurisdictions, certain requirements are imposed before the company may allot its shares and/or commence business.

Restrictions on allotment.

I. *Quebec.*

Manitoba.

New Brunswick.

Nova Scotia.

In the above jurisdictions there are no restrictions on the allotment of shares. The company can go to allotment as soon as it is incorporated. In Manitoba, however, a company before selling shares or securities in the course of continued and successive acts or by advertising or solicitation must comply with the Sale of Shares Act (see p. 276, below).

II. *Dominion* (s. 43C (1)).

Under the Dominion Act a company which does not issue a prospectus on or with reference to its formation is forbidden to allot any of its shares or debentures (which term includes bonds or debenture

stock) unless, before the first allotment of either shares or debentures, there has been filed with the Secretary of State a statement in lieu of prospectus. This document must be signed by every person who is named therein as a director or proposed director or by his agent authorized in writing, and must be in the form and contain the particulars set out in Form F in the schedule to the Act (see p. 47, below). Private companies are exempted from the foregoing provision and can proceed to allotment forthwith after incorporation (see p. 79, below).

III. *Ontario* (ss. 112, 113).

Saskatchewan (ss. 94, 95).

Alberta (ss. 108, 108a, 109).

The restrictions on allotment differ according to the class of company involved. For this purpose companies may be classified as follows:—1. Prospectus companies; 2. non-prospectus companies, and (in Ontario) 3. private companies.

1. Companies upon whose formation a prospectus is issued offering shares to the public.

The company may not proceed to allotment of any shares offered to the public for subscription until the following conditions have been complied with: —

(1) The prospectus, which must comply with the statutory provisions, must have been filed with the Provincial Secretary or Registrar.

(2) The prospectus must provide for payment on application of not less than five per cent. of the nominal amount of each share offered. This requirement does not apply in Alberta to mining companies with specially limited liability (governed by s. 63 of the Alberta Act). As to other requirements see “prospectus” p. 49, below.

(3) The prospectus (and in Saskatchewan and Alberta the memorandum or articles also) must fix the minimum subscription upon which the directors may proceed to allotment. If this is not done, then the minimum is the whole amount offered for subscription. It is not unusual to fix the minimum at a nominal amount of one share, and this is a sufficient compliance with the requirement.

(4) The minimum subscription must have been subscribed and the sum payable on application must have been paid to and received by the company. Actual payment is necessary and a cheque has been held not to constitute payment until it has been cleared. The amount fixed as the minimum subscription is to be reckoned exclusively of any amount payable otherwise than in cash.

The above requirements, except (2), do not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription. It is further provided that, if the above conditions have not been complied with on the expiration of a specified number of days after the first issue of the prospectus, all money received from the applicants for shares shall be forthwith repaid to them without interest. If repayment is not made within a further specified time the directors are jointly and severally liable to repay the money with interest. A director is not liable if he proves that the loss of the money was not due to any misconduct or negligence on his part. Any condition requiring or binding any applicant for shares to waive compliance with any of the above requirements is void.

If an allotment is made in contravention of the above provisions, the allotment is voidable at the instance of the applicant within one month after

the holding of the statutory meeting. If a director knowingly contravenes or permits or authorizes the contravention of any of the above provisions, he is to be liable to compensate the company and the allottee for loss, damages or costs. An action for such purpose, however, may not be commenced after the expiration of two years from the date of the allotment.

In Saskatchewan and Alberta a company, before selling its shares or securities, must comply with the Sale of Shares Act (see p. 276, below).

2. Companies which do not issue any invitation to the public to subscribe for shares.

Ontario (s. 102).

A company which does not issue a prospectus on or with reference to its formation is forbidden to allot any of its shares, debentures or debenture stock, unless before the first allotment there has been filed with the Provincial Secretary a statement in lieu of a prospectus, signed by every person who is named therein as a director or proposed director or by his agent authorized in writing. The form is Form 5 in the schedule to the Act and is obtainable gratis from the Department.

Saskatchewan (s. 94 (7)).

The Act contains the following provisions:—

(7) In the case of the first allotment of share capital, payable in cash, of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say):

- (a) The amount, if any, fixed by the memorandum or articles as the minimum subscription upon which the directors may proceed to allotment; or
- (b) If no amount is so fixed and named, then the whole amount of the share capital other than that issued or

agreed to be issued as fully or partly paid up otherwise than in cash;

Has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

The company must not sell its shares or securities by continued and successive acts or by advertising or solicitation without complying with the Sale of Shares Act (see p. 276, below).

Alberta.

There are no conditions precedent to allotment where the company is not offering the shares or securities to the public and no prospectus has been filed. The company must not sell its shares or securities by continued and successive acts or by advertising or solicitation without complying with the Sale of Shares Act (see p. 277, below).

3. Private company.

Ontario.

A private company (as to which see p. 76, below) can proceed to allotment forthwith upon incorporation. No preliminary requirements are imposed.

IV. *British Columbia* (ss. 31, 33, 36).

Requirements similar to but more elaborate than those above noted are imposed in British Columbia before a public company may allot its shares, bonds or debenture stock. These requirements and the forms required to be filed are fully set out in the Act and schedules. For the text of the sections see p. 40, below.

Commencement of business.

Some of the Acts require a certain proportion of the share capital to be subscribed and paid up before the company may commence operations. The Acts containing such a requirement are Dominion, Quebec and Manitoba. In other jurisdictions, viz., Ontario, Saskatchewan, Alberta and British Columbia, more elaborate requirements are imposed. In Nova Scotia the company may commence operations immediately on incorporation. The same is true in New Brunswick, except where shares of no nominal or par value are issued. Details of these provisions are as follows:—

Dominion (ss. 26, 86).

Quebec (art. 5972).

Manitoba (s. 20).

These Acts contain a provision that the company shall not commence business or operations (or incur liability—Dominion and Quebec) before ten per cent. of its authorized capital has been subscribed and paid for. This restriction prohibits, not organization, but the commencement of the business operations of the company. The payment of ten per cent. of the authorized capital need not be made in cash. The transfer of assets to the company in consideration of the issue of paid-up shares is sufficient and this is the manner in which the above provisions are commonly complied with.

The above requirements are directory only and not imperative, and the acts of a company which has not complied with the requirements will not be void. No penalty is expressly imposed in Manitoba. Under the Dominion and Quebec Acts every director who expressly or impliedly authorizes the

commencement of operations or incurring of liabilities before ten per cent. of the authorized capital has been subscribed and paid for is to be jointly and severally liable with the company for the payment of any such liabilities so incurred.

In Manitoba s. 20 does not apply to mining companies incorporated under the Manitoba Mining Companies Act.

Companies with no par value shares.

Dominion (s. 7B).

Quebec (s. 5967a).

New Brunswick (ss. 127-129).

Companies with shares of no nominal or par value incorporated under the above Acts are not subject to the above restrictions, but they are prohibited from beginning to carry on business or incur debts until the amount of capital stated in the letters patent as the amount with which the company will carry on business has been fully paid in money or in property taken at its actual value (see p. 6, above).

Ontario (ss. 114, 115).

The restriction against commencing business applies only to companies which offer their shares, debentures or debenture stock to the public for subscription. In other words, it applies to "prospectus companies" and not to companies which file only a statement in lieu of a prospectus and make no public offer. Such latter companies may commence business immediately on incorporation, although they are subject to the restriction on first allotment of shares above noted. Owing to the fact that it is often difficult to determine whether a com-

pany in selling its shares has made a public offering within the meaning of the Act, and that if it does make a public offering a certificate that the company is entitled to commence business is essential, it is advisable, as a general rule, to file a prospectus and obtain the certificate, even though no public offering in the popular sense is contemplated. Private companies, however, (as to which see p. 79) are not subject to any restriction.

The Ontario sections are as follows:—

114.—(1) A company shall not commence any business or exercise any borrowing powers unless;

- (a) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and
- (b) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a portion equal to the proportion payable on application and allotment on the shares offered by a public company; and,
- (c) There has been filed with the Provincial Secretary a statutory declaration by the secretary or one of the directors in the prescribed form that such conditions have been complied with and the Provincial Secretary has certified as provided by sub-section 2.

(2) The Provincial Secretary may, on the filing of the statutory declaration, certify that the company is entitled to commence business, and the certificate shall be conclusive evidence that the company is so entitled, but upon it being shown that the certificate was made upon false statement or upon the withholding of any material statement the Provincial Secretary may cancel and annul such certificate.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares, debentures, or debenture stock or the receipt of any money payable on any application.

(5) If any company commences business or exercises borrowing powers in contravention of this section every person who is

responsible for the contravention shall, without prejudice to any other liability, incur a penalty not exceeding \$50 for every day during which the contravention continues.

(6) Where a company has commenced business without having complied with the requirements of sub-section 1 of section 108 of The Ontario Companies Act, 1907, and the Lieutenant-Governor-in-Council is satisfied that the non-compliance was due to inadvertence, error or mistake, and that before commencing business the conditions mentioned in clauses (a) and (b) of that section had been complied with, he may authorize the company to file the statutory declaration *nunc pro tunc*, and if it is filed within one month after the date of the Order-in-Council it shall have the same effect as if it had been filed before the company commenced business. 2 Geo. V. c. 31, s. 112.

115. All sums received by the company or by any promoter, director, officer or agent thereof shall be held in trust by the company or such promoter, director, officer or agent until deposited in a chartered bank to the credit of the company, and shall be so deposited and there remain in trust until the issue of the certificate by the Provincial Secretary. 2 Geo. V. c. 31, s. 113.

It will be observed that the above provisions involve compliance with the restrictions on allotment described at p. 30, above, i.e., the filing of a prospectus and the allotment of the minimum subscription. Every director must have paid the amount payable on application and allotment in respect of the shares subscribed for by him. A statutory declaration as required by sub-section (c) of s. 114 (1) must be filed with the Provincial Secretary. The form is obtainable from the Department gratis. The fee payable for the certificate is \$25.

The certificate may be withdrawn if it is shown to have been made on any false statement or upon the withholding of any material statement. What the effect of such withdrawal on existing contracts may be is not stated. Under the circumstances it may be important for persons contracting with a company recently formed to satisfy themselves that

no mis-statements or withholding of material statements have taken place. Such persons should insist on production of the certificate, for until the certificate is obtained the contracts of the company are provisional only and not binding on the company.

Saskatchewan (ss. 25-28; 120).

The company must be registered under the Act. Before registration it must file with the Registrar (1) a certified copy of its charter and by-laws, i.e., its memorandum and articles; (2) a petition in form B in the schedule to the Act; and (3) a statutory declaration of the president, vice-president, secretary or manager in form C in the schedule to the Act. For fees on registration see Tables of Fees, p. 370, below.

The company must also be licensed before it may carry on business in Saskatchewan. Upon compliance with the provisions of the Act and payment of the fees prescribed, the company is entitled to receive from the registrar a license to carry on business and exercise its powers in Saskatchewan. For fees see Tables of Fees, p. 370, below.

A company which invites the public to subscribe for its shares is forbidden to commence any business or exercise any borrowing powers until it has obtained a certificate showing that it is entitled to commence business. The provisions of the Act in this regard read as follows:—

COMMENCEMENT OF BUSINESS BY PUBLIC COMPANY.

120. A company shall not commence any business or exercise any borrowing powers unless:

- (a) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

- (b) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and
- (c) There has been filed with the registrar a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.
- (2) The registrar shall, on the filing of the statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.
- (3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding until that date, and on that date it shall become binding.
- (4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.
- (5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding \$200 for every day during which the contravention continues.
- (6) Nothing in this section shall apply to any company where there is no invitation to the public to subscribe for its shares.

Alberta (s. 107).

A company which invites the public to subscribe for its shares is forbidden to commence any business or exercise any borrowing powers until it has obtained a certificate showing that it is entitled to commence business. The provisions of the Act in this regard are identical with those in Saskatchewan above set out.

British Columbia (ss. 31, 33, 36).

The restrictions on commencing business or exercising borrowing powers apply to all companies except private companies.

The text of the British Columbia sections is as follows:—

31. (1) A public company having a share capital shall not:—
 (a) Allot any of its shares or debentures; or
 (b) Commence any business; or
 (c) Exercise any borrowing powers,—
 unless:—

- (d) The company has filed with the Registrar a prospectus complying with this Act, or, if the company does not issue any invitation to the public to subscribe for its shares or debentures, a statement in lieu of prospectus, according to Form 4 in the Second Schedule, naming therein an amount in cash as the minimum subscription upon which the directors may proceed to allotment: Provided that where the company proposes to take over an established business, and does not require or propose to issue any shares or debentures for cash to enable it to carry on that business, the company shall file a statement in lieu of prospectus according to Form 5 in the Second Schedule, and shall not be required to name therein a minimum subscription; and
 - (e) The minimum subscription so named has been subscribed, and the sum payable on application therefor, which shall not be less than five per cent. of the nominal amount of each share or debenture, has been paid to and received by the company; and
 - (f) The company has filed with the Registrar a statutory declaration as prescribed by section 33; and
 - (g) The Registrar has issued under his seal of office a certificate that the company is entitled to commence business.
- (2) The minimum subscription so named:—
- (a) Shall be the amount which the company shall fix as necessary in order that the company may, with a reasonable prospect of success, carry out the plan of operations or conduct the business described in the prospectus or statement in lieu of prospectus; and
 - (b) Shall be reckoned exclusively of any amount payable to the company otherwise than in cash; and
 - (c) Shall only be expended for the purposes set forth in the statement or prospectus, unless the company by extraordinary resolution sanctions its expenditure for some other purpose authorized by the memorandum of the company. (*New*).
- (3) (a) All money paid to and received by the company in respect of the minimum subscription shall be deposited as trust

funds to its credit as trustee in a separate account in a branch or agency in the Province of a bank, and the company shall hold and shall declare in its prospectus or statement in lieu of prospectus that it will hold all such moneys in trust to be repaid, if the minimum subscription is not subscribed, in accordance with this section.

(b) If any such money is not so deposited and held, the directors of the company shall be jointly and severally liable to repay the money with interest at the rate of six per cent. per annum from the date when it was paid to the company by the subscriber: Provided that a director shall not be liable if he proves that the failure so to deposit and hold the money was not due to any misconduct or negligence on his part. (*New*).

(4) (a) In the case of a company which has filed a prospectus, if the minimum subscription has not been subscribed at the expiration of ninety days after the first issue of the prospectus, all money paid to and received by the company in respect of the minimum subscription shall be forthwith repaid to the subscribers without any deduction, but without interest; and if such money is not so repaid within ninety-eight days after the first issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of six per cent. per annum from the expiration of the ninety-eighth day: Provided that a director shall not be liable if he proves that the failure so to repay the money was not due to any misconduct or negligence on his part.

(b) In the case of a company which has filed a statement in lieu of prospectus, the periods of ninety and ninety-eight days shall commence respectively from the date on which the statement is filed with the Registrar.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of shares and debentures.

(6) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(7) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement of this section shall be void.

(8) An allotment made by a company to an applicant in contravention of this section shall be void, and shall be so void notwithstanding that the company is in course of being wound up.

(9) Every company which fails to comply with or contravenes any provision of this section shall be guilty of an offence against this Act.

(10) For the purposes of Forms 4 and 5 in the Second Schedule, the expression "vendor" shall have the meaning assigned to it by subsections (5) and (6) of section 90.

(11) This section shall not apply (a) to a company incorporated before the first day of July, 1910, or (b) to a company which has obtained, under the "Companies Act, 1910," or this Act, a certificate entitling it to commence business, or (c) to a company which has before this Act comes into force filed with the Registrar a prospectus or statement in lieu of prospectus, but such company shall, notwithstanding section 270, comply with section 96 of the "Companies Act, 1910."

33. (1) When the minimum subscription has been subscribed, the company shall file with the Registrar a statutory declaration by the directors:—

- (a) According to Form 6 in the Second Schedule, in the case of a company which has filed a statement in lieu of prospectus and has named therein a minimum subscription; or
- (b) According to Form 7 in the Second Schedule, in the case of a company which has filed a statement in lieu of prospectus and has not named therein a minimum subscription; or
- (c) According to Form 8 in the Second Schedule, in the case of a company which has filed a prospectus:

Provided that where a director was by reason of his absence from the Province or for other good reason unable to and did not perform his duties as a director in relation to the organization of the company pursuant to this Division, he shall not be required to make such a statutory declaration as aforesaid, but in lieu thereof shall make a statutory declaration stating why he was prevented from so performing his duties as a director.

(2) Upon the filing of such a statutory declaration as is prescribed by this section, the Registrar may issue under his seal of office a certificate that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

36. (1) No shares or debentures of a public company allotted or issued or agreed to be allotted or issued to any person for property, services, or any consideration other than cash shall be transferred, sold, or in anywise dealt with or disposed of before the statutory meeting of the company is held pursuant to this Act, and no certificate of any such share or debenture shall be issued or delivered by the company until that meeting is held.

(2) A transfer, sale, or other dealing in or disposition of shares or debentures contrary to this section shall be void.

(3) Every company and person who contravenes this section shall be guilty of an offence against this Act, and the directors of the company shall be liable to compensate the company and any person injured for any loss, damage, or costs which the company or such person may have sustained or incurred by a contravention of this section:

Provided that:—

- (a) A director shall not be liable if he proves that the contravention was not due to any misconduct or negligence on his part; and
- (b) Proceedings to recover any such loss, damage, or costs shall not be commenced after the expiration of two years from the date of the contravention. (*New*).

CHAPTER III.

THE PROSPECTUS.

One of the most important tasks which those engaged in the formation of a company have to perform is to provide it with capital. Except where a business is being converted into a company and no further capital is required, or the capital is privately subscribed, an offer to the public of the company's shares or bonds is necessary. This is generally made by means of a prospectus or by advertising in the press or by circulars or some similar means, supplemented by personal canvass. In some jurisdictions a prospectus is not compulsory, in others the statute requires a prospectus to be issued. The object of the legislative provisions relating to the prospectus is to afford the public information in respect of all material circumstances connected with the formation and the organization of the company. These provisions are so onerous that companies frequently effect a private sale of their shares or bonds, leaving the purchaser (usually a broker or an underwriting syndicate) to dispose of them to the public. This can be done in some jurisdictions and under certain conditions, but should not be attempted without competent legal advice.

Under the Dominion Act the term "prospectus" is defined as "any prospectus, notice, circular, advertisement or other invitation offering to the public for subscription or purchase any shares or debentures of a company" (s. 43); and this definition, with slight modifications, is followed in the Acts

of Nova Scotia, Saskatchewan, Alberta and British Columbia. What will constitute an invitation to the public would seem to be a question of fact depending on the circumstances of each case, but the phrase apparently contemplates an offer by the company to anyone who chooses to subscribe or purchase shares.

The Ontario Act (s. 99, sub-sec. b) contains a much wider definition of the term "prospectus", as follows: "Any prospectus, notice, circular, advertisement or other invitation offering for subscription or purchase any shares, debentures, debenture stock, or other securities of a company, or published or issued for the purpose of being used to promote or aid in the subscription or purchase of such shares, debentures, debenture stock or securities." Section 99 and the following sections provide that a company which offers its shares, debentures, etc., to the public must file a prospectus, and what constitutes an offer to the public is defined in the widest terms. Accordingly, it is difficult for an Ontario company to avoid filing a prospectus and, by reason of the fact that unless a prospectus is filed, a certificate that the company is entitled to commence business cannot be obtained (see p. 37, above), it will usually be advisable to file a prospectus whether there is a public offering in the ordinary sense or not.

The prospectus should be fair and honest throughout. There should be no untrue, ambiguous or misleading statements, nor suppression of any material facts, nor attempt by any other means to create a false impression. Exaggerated and unduly glowing statements should be avoided. The requirements of the governing statute as to the particulars to be disclosed must be complied with.

In the case of Dominion, Saskatchewan, Alberta and British Columbia companies a person may not be named as a director or proposed director in the prospectus unless certain requirements have been complied with (see pp. 23 and 18, above).

The prospectus is usually prepared by the promoters with the assistance of the brokers and solicitors of the company and should be printed. A director is very unwise to sign any prospectus which has not been finally approved by the company's solicitors.

Statutory requirements as to filing a prospectus.

Quebec.

There is no provision as to a prospectus. A mining company, however, whose principal office is outside the province, must comply with special requirements before selling its shares (see p. 283, below).

Manitoba.

There is no provision as to a prospectus. The company, however, before selling its shares or securities in the course of continued and successive acts, or by advertising or solicitation, must comply with the Sale of Shares Act (see p. 276, below).

New Brunswick (s. 48).

A prospectus is not compulsory, nor is there any provision for filing the prospectus (if one is issued) in any government department. However, if any prospectus or notice inviting persons to subscribe for *shares* is issued, it must specify the dates of, and names of the parties to, any contract entered into by the company, or its directors or trustees. Any

prospectus or notice not specifying these particulars is to be deemed fraudulent on the part of the promoters, directors and officers of the company knowingly issuing the prospectus or notice, as regards any person taking shares on the faith of the prospectus, unless he shall have had notice of such contract.

The above provision would seem to make it necessary to specify any contract entered into by the company or by a promoter, director, etc., which might reasonably be expected to influence prospective applicants for shares. The safer course would be to specify *all* such contracts, whether they relate directly or indirectly to the affairs of the company or the promoters, directors, trustees or other persons with whom any negotiations have been carried on. The remedy of a person who has taken shares on the faith of a prospectus which does not comply with the above provision is to sue the persons issuing it for the damages he has suffered. The above provision relates to shares only; subscribers for bonds are not protected. See further Company Law, p. 180.

Nova Scotia (ss. 2, 79, 80).

If a prospectus is issued it must comply with the statutory requirements (see p. 49, below).

Prospectus or statement in lieu of prospectus.

Dominion (ss. 43-43D).

Ontario (ss. 99-110).

Every company, other than a private company (see p. 79) which does not file a prospectus on or with reference to its formation, must file a statement in lieu of prospectus. Until it does so it is forbidden to allot any of its shares or debentures. The state-

ment, which provides for almost the same disclosure as a prospectus, must be in the statutory form appended to the Act (Dominion Form F; Ontario Form 5). The Ontario form is obtainable from the Provincial Secretary gratis. The document is an important one and care must be taken to fill it up correctly. For filing fees see Tables of Fees, pp. 357, 359, below).

It has been observed above that an Ontario company will generally be well advised to file a prospectus.

Saskatchewan (ss. 84-87).

The first allotment of shares offered to the public for subscription is forbidden unless s. 94 is complied with (see p. 30, above). This involves filing a prospectus if there is to be a public offering. There is no provision for filing a statement in lieu of prospectus. The company must not sell its shares or securities by continued and successive acts or by advertising or solicitation without complying with the Sale of Shares Act (see p. 276, below).

Alberta (ss. 58-59, 108a).

If shares or bonds are offered to the public for subscription a prospectus must be filed, otherwise the allotment of such shares or bonds is forbidden, and the subscription is not binding on the subscriber, unless before he subscribes he receives a copy of the prospectus (s. 108a). To take advantage of this provision the subscriber must repudiate promptly. There is no provision for filing a statement in lieu of prospectus.

The company must not sell its shares or securities by continued and successive acts or by advertising

or solicitation without complying with the Sale of Shares Act (see p. 278, below).

British Columbia (ss. 31; 89-92).

A company (other than a private company) may not allot any of its shares or debentures or commence any business or exercise any borrowing powers unless it has filed a prospectus or a statement in lieu of prospectus. A statement in lieu of prospectus must be according to Form 4 or Form 5 in the schedule to the Act as the case may require. For the text of the above provisions see p. 40, above. Special regulations apply in the case of extra-provincial companies and mining companies (see pp. 284, 285, below).

Statutory requirements as to form and contents.

Dominion (ss. 43A, 43B).

Ontario (ss. 103, 104).

Nova Scotia (ss. 79, 80).

Saskatchewan (ss. 84, 85).

Alberta (ss. 55, 56).

British Columbia (ss. 89, 90).

In addition to the requirements of a general nature above indicated the following should be noted:—

1. Every prospectus must be dated.

The date must not be prior to the date of filing, and therefore the prospectus should be post-dated to the date of filing or the date filled in on the date of filing.

2. The prospectus must be (a) signed by every person named therein as a director or proposed director (or—Ontario—provisional director) or by his agent authorized in writing; (b) filed with the

Secretary of State, Provincial Secretary or Registrar, as the case may be, on or before its publication, i.e., its date; and not issued until filed.

Where a written authorization is used it should be verified by affidavit. For filing fee see Tables of Fees, pp. 355 ff, below.

3. The Secretary of State, Provincial Secretary or Registrar, as the case may be, is forbidden to accept any prospectus for filing unless it is dated and signed.

4. The prospectus must state on its face that the prospectus (or—Dominion; Nova Scotia; British Columbia—a copy of the prospectus) has been filed. If the prospectus is issued without being filed a penalty is imposed.

5. The prospectus should not name a person as director unless the requirements (if any) of the governing Act as to filing his written consent have been complied with (see pp. 23, 18, above).

6. The prospectus should set out the various particulars required by the governing Act to be stated.

The Dominion and provincial sections which state the particulars required to be disclosed in the prospectus are, subject to some variations, the same, all being based on section 81 of the Imperial Act.

It should be noted that under the Dominion Act the contents of the letters patent must be set out. In Ontario this is not required. In Saskatchewan and Alberta the contents of the memorandum must be set out. In British Columbia the contents of the memorandum and articles as to the amount of the authorized capital and the shares or classes of shares into which it is divided must be stated. Anyone who proposes to draft a prospectus should have

before him a copy of the governing Act and follow its provisions closely. Legal advice is necessary.

For a form of prospectus see Forms, p. 488.

The provisions of section 43B of the Dominion Act, setting out the specific requirements as to particulars to be stated in the prospectus, read as follows:—

43B. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state,—

- (a) the contents of the letters patent and supplementary letters patent, with the names, descriptions, and addresses of the signatories to the petition for incorporation, and the number of shares subscribed for by them respectively; and the number of founders' or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and,
- (b) the number of shares, if any, fixed by the by-laws of the company as the qualification of a director, and any provision in the said by-laws as the remuneration of the directors; and,
- (c) the names, descriptions, and addresses of the directors or proposed directors; and,
- (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscriptions on each previous allotment made within the two preceding years, and the amount actually allotted; and the amount, if any, paid on the shares so allotted; and,
- (e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which these shares or debentures have been issued or are proposed or intended to be issued; and,
- (f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered

for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors; and,

- (g) the amount (if any) paid or payable as purchase money in cash, shares or debentures, for any such property as aforesaid, specifying the amount (if any) payable for good will; and,
- (h) the amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and,
- (i) the amount or estimated amount of preliminary expenses; and,
- (j) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and,
- (k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or to any contract entered into more than two years before the date of issue of the prospectus; and,
- (l) the names and addresses of the auditors (if any) of the company; and,
- (m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm with a statement of all sums paid or agreed to be paid to him or the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and,

- (n) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

(2) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where,—

- (a) the purchase money is not fully paid at the date of issue of the prospectus; or,
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or,
- (c) the contract depends for its validity or fulfilment on the result of that issue.

(3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee..

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the letters patent and supplementary letters patent, the signatories to the petition for incorporation and the number of shares subscribed for by them.

(6) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that,—

- (a) as regards any matter not disclosed, he was not cognizant thereof; or,
- (b) the non-compliance arose from an honest mistake of fact on his part;

Provided that in the event of non-compliance with the requirements contained in paragraph (m) of subsection (1) of this section no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favor of other persons; but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

(8) The requirements of this section as to the letters patent and supplementary letters patent and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company commenced business.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section. Imp. Act, 1908, s. 81.

Remedies of subscriber when prospectus untruthful or defective.

A person who has been induced to subscribe for shares or bonds of a company by misrepresentations or non-disclosure of material facts in a prospectus has certain remedies both at common law and by statute. A summary of these is given below, but as their successful enforcement often depends on highly technical rules and the subscriber's rights may be lost or impaired by delay, a person who has reason to believe that he has been misled should seek competent legal advice immediately.

Common law remedies.

If the prospectus contains a fraudulent misrepresentation, which induced him to subscribe, the subscriber can bring an action in damages for deceit against the persons responsible for the prospectus. If the subscription was induced by a material misrepresentation, even though it was an innocent one, the subscriber can repudiate his subscription and

demand back what he has paid under it, and if the company does not comply he can bring an action to rescind his subscription and get his money back.

Statutory remedies.

New Brunswick (s. 48).

If the prospectus does not specify the required particulars as to contracts (see p. 46, above) the subscriber who has no notice of the contract is entitled to bring an action for damages against the officers who knowingly issue the prospectus.

Dominion (s. 43D).

Ontario (s. 107).

Nova Scotia (ss. 80, 81).

Saskatchewan (s. 87).

Alberta (s. 57).

British Columbia (s. 92).

The subscriber may bring an action against the directors or promoters for compensation for the loss or damage he has sustained by reason of any untrue statement in the prospectus. If the prospectus does not comply with the statutory requirements as to disclosure the subscriber may also have further rights, the exact nature and extent of which have not been finally determined.

Under the Ontario Act the directors and other persons responsible for the issuance of the prospectus are also liable to a penalty not exceeding \$200 for every violation of the provisions of ss. 101-104, unless they excuse themselves as provided in s. 105.

In Nova Scotia if the prospectus does not comply with the Act, it is to be deemed fraudulent on the part of the company; also on the part of promoters, directors and officers unless they excuse themselves as provided in s. 80.

The provisions of the Acts above noted are based on s. 84 of the Imperial Act. The Imperial section takes the place of the Directors' Liability Act of 1890, which was passed for the protection of subscribers. Before 1890, the subscriber's only remedy against the persons who had induced him to subscribe by means of a prospectus containing untrue statements was by action of deceit. To support such an action it was essential to show that the directors or other persons making the statements did so fraudulently. In other words, it was necessary to show that they had made the statements knowing them to be false, or that they made the statements recklessly, not caring whether they were true or false. Mere carelessness or lack of reasonable grounds for belief in the statements was not enough to make the directors liable. The result was that the subscriber was usually left without a remedy against the persons who had induced him to take shares. Now, if the subscriber can show that a material statement, by which he was induced to take shares, and by reason of which he has sustained damage, is an untrue statement, the directors or other persons responsible under the statute are liable to pay compensation to the subscriber unless they can show that they believed and had reasonable grounds to believe the statement to be true. Special provision is made for statements by experts, officials and public official documents (see the Dominion section set out below).

The provisions of the Dominion, Ontario, Nova Scotia, Saskatchewan, Alberta and British Columbia Acts in respect of directors' liability are similar.

The Dominion section is as follows:—

43D. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the prospectus, and every person who has authorized the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved,—

- (a) With respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and,
- (b) With respect to every untrue statement purporting to be a statement by, or contained in what purports to be a copy of or extract from a report or valuation of, an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation: Provided that the director, person named as director, promoter, or person who authorized the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and,
- (c) With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document, unless it is proved—
 - (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent; or,
 - (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or,

(iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Where a company existing on the first day of September, one thousand nine hundred and seventeen, has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorized the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(4) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in the case of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section,—

The expression “promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

The expression “expert” includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him. Imp. Act, 1908, s. 84 (7 & 8 Geo. V., 1917, c. 25, s. 7).

Remedy of subscriber to whom no prospectus has been delivered.

Ontario (s. 101).

The Act provides in effect that a subscription is not binding on the subscriber unless a prospectus has been delivered to him.

Section 101 reads as follows:—

101.—(1) Every public company before offering to the public for subscription shares, debentures, debenture stock or other securities shall issue a prospectus as hereinafter set out.

(2) All purchases, subscriptions or other acquisitions of shares, debentures, debenture stock or other securities of any company required to file a prospectus or a statement in lieu of a prospectus, shall be deemed, as against the company and the signatories to the prospectus or statement, to be induced by such prospectus or statement, any term, proviso or condition thereof to the contrary notwithstanding.

(3) A subscription for shares, debentures or debenture stock shall not be binding on the subscriber unless at or before the subscription there is delivered to him a copy of the prospectus, if any, issued by the company, or if a prospectus has not been issued a copy of the statement mentioned in section 102.

(4) The subscriber to be entitled to the benefit of sub-section 3 must elect to withdraw his subscription before or within ten days after notice of the allotment to him of the shares, debentures, or debenture stock for which he has subscribed. 2 Geo. V. c. 31, s. 99.

Alberta (s. 108a).

The Alberta Act contains the following provision:—

108a. No allotment shall be made of any shares, stock, bonds or debentures of a company offered to the public for subscription unless a prospectus has been previously filed with the registrar, and no subscription for shares, debentures or debenture stock shall be binding upon the subscriber, unless before he subscribes he receives a copy of such prospectus.

(2) This section shall apply to every company whether incorporated by or under the laws of Alberta or otherwise. 1914, c. 10, s. 8.

For the effect of the above provisions see Company Law, p. 637.

British Columbia (ss. 90 (4), 90 (9), 267, 268).

Section 90, sub-section 4 of the British Columbia Act reads as follows:—

(4) (a) The company shall, upon receipt of his application, forthwith furnish every person who subscribes for any shares or debentures of the company offered by the prospectus with an acknowledgment of his application and a copy of the prospectus.

(b) Where any matter not amounting to a prospectus, but which expressly or by implication invites the public to inquire into the plans or prospects of a company, or as to subscriptions for or the purchase of shares or debentures of a company, is printed, published, or advertised by or on behalf of the company, the company shall, upon receipt of his application, forthwith furnish every person who subscribes for or purchases any shares or debentures of the company with an acknowledgment of his application and a statement in writing of such information as is by subsection (1-) required to be contained in a prospectus. Sections 89 and 92 shall apply as if a prospectus had been issued, and where the company has not yet obtained a certificate entitling it to commence business, subsection (3) of this section and sections 31 and 33 shall also apply, *mutatis mutandis*, as if a prospectus had been issued.

(c) This subsection shall apply to every case to which subsection (4) of section 89 applies. (*New*).

Sub-section 9 of the same section provides that (subject to sub.-sec. (8) whereby directors and others may in certain circumstances be relieved) every company and person who makes default in complying with any requirement of section 90 is to be guilty of an offence against the Act. For an offence against the Act a penalty not exceeding \$500 may be recovered under section 267, and under section 268 the Court in imposing a penalty may direct that the whole or any part be applied towards rewarding the person on whose information or at whose suit the penalty is recovered.

Prevention of fraudulent statements by companies.

Ontario (s. 106).

Manitoba (s. 97).

Alberta (s. 61).

The circulation of misleading documents is prohibited under penalty; in particular, documents which mis-state the capitalization or which contain any false statement as to the incorporation, control, management, financial standing, etc., of the company.

Precautions to be observed by prospective purchasers or subscribers.

From the point of view of the investor, companies which issue shares or bonds may be classified as follows:—

(1) New companies formed to undertake new enterprises;

(2) New companies formed to acquire and carry on one or more existing businesses;

(3) Established companies which require further capital.

As to classes (1) and (2) the investor should consider particularly the following points:—

New companies.**I. Capitalization.**

The capitalization (i.e., capital stock, bonds and securities issued and to be issued) should bear some reasonable relation to the actual value of the company's assets. The general practice is to fix the capitalization at an amount on which the company may be reasonably expected to pay a moderate dividend. When the company is incorporated to carry on an existing business, a value may be put on intangible assets such as trade names and good-will

for the purpose of capitalization. Such value should not be exaggerated. When the company is formed to undertake a new enterprise any estimate of earning capacity as a basis for capitalization is necessarily uncertain. When a company is formed to carry on one or more existing businesses the capitalization is often so fixed that bonds and/or preference shares are issued up to the full value of the assets acquired; common shares are issued to such amount as will permit payment of a reasonable dividend on the basis of estimated earnings after prior charges, including bond interest and preference share dividends, have been satisfied.

In the case of mergers and consolidations the common shares are often supposed to represent the economies arising from the consolidation or merger and the profits from growth of business through natural development and elimination or reduction of competition.

In all cases unduly optimistic estimates of earnings should be a ground of suspicion.

The rights attaching to the shares, bonds or securities offered for subscription should be scrutinized. It will be seen below (p. 83) that there are many different kinds of preference shares. Preference shares which are non-cumulative, or which confer no voting rights whatever, or which do not forbid the issuance of bonds or mortgages except with the consent of a substantial majority of the preference shareholders, should generally be avoided. Bonds also are issued in various forms and are secured in various ways (see p. 188, below). From the point of view of the investor the following points should be noted. The bonds should be secured by deed of trust in favour of a reputable trust com-

pany. The deed of trust should confer a specific charge upon the fixed assets and a floating charge on the remaining assets and the undertaking. A proper provision for the appointment of a receiver in the event of default is important. The bonds should bear a fixed rate of interest. Income bonds, save in exceptional circumstances, are not a desirable security. Unless the trust deed constitutes a first mortgage the investor should satisfy himself that prior charges can be easily met.

In an issue of any magnitude the opinion of counsel on the validity of the issue is usually available.

2. The assets or business to be taken over by the company.

The company will usually have taken over or have arranged to take over from a vendor an existing business or assets before the public is asked to subscribe. Particular attention should be paid to the price which the company has paid or is bound to pay to the vendor and whether payment is in cash or shares or securities. The larger the proportion of purchase price payable in shares or securities, the larger the proportion of the subscribers' money which will be available for the company's general requirements. If the vendor exacts an unduly large cash payment, most of the public's money may go to pay the vendor and leave the company short of working capital. Sometimes there is an intervening vendor or vendor syndicate between the owner of the business or assets and the purchaser company and consequently a second profit at the company's expense.

Where a company takes over an existing business it is particularly important that a substantial por-

tion of the purchase consideration should be in the form of shares. The vendor is then directly interested in the success of the company's subsequent operations.

Where an existing business is taken over it is desirable that the prospectus should state the past net profits, covering at least three years and give a statement and recent valuation of the assets acquired and a statement of the liabilities assumed by the company. Very often a letter from the owner or some official connected with the business is set out in the prospectus covering these points. In practice this is regarded as sufficient, though not so satisfactory as a certificate of auditors and appraisers. The amount allowed for good-will should be noted.

3. Working capital.

It should be ascertained what cash will be available for the purpose of carrying on the company's operations after the issue of shares or securities has been taken up and the expenses of the issue paid.

4. Directors and management.

The subscriber is entitled to see on the board of directors the names of successful men of business. It is also important to see that satisfactory arrangements have been made to secure the services of a competent and experienced manager. If an existing successful business is being taken over by the company it is usually held out as an inducement that the former owners and managers will continue to conduct the business.

5. The prospectus.

The production of a copy of the statutory prospectus should be insisted upon, i.e., the document

containing the information which the governing Act requires, stating on its face that it has been filed and showing that it has been signed by all the directors. If the prospectus is fairly and properly drawn it will give information on most of the points above noted. Very often the document used to effect sales is a circular got out by brokers or underwriters which does not contain the statutory information.

While it is not suggested that such circulars (at any rate where they are put out by a reputable firm) are misleading, the subscriber in most jurisdictions has a right to the disclosure which a statutory prospectus gives. There is no reason why he should not insist on his rights.

Frequently the company issues no prospectus, but in the first instance effects a private sale of its shares or securities to a purchaser. The purchaser distributes the shares or securities to the public by way of re-sale. When this procedure is followed, the company, in some jurisdictions, is nevertheless bound to file a statement in lieu of a prospectus see (p. 47, above). This document, if drawn in accordance with legal requirements, gives substantially the same disclosure as a prospectus. Production of a copy should be insisted upon.

When the investor, instead of buying direct from the company, is asked to take shares from a third person, it is well to see that the shares are in fact transferred from him and are not being issued direct from the company's treasury. Otherwise, if the purchaser pays the company less than par, he may incur further liability to the company or a liquidator (see p. 107). If the seller is selling his own shares he will have a certificate to endorse to his purchaser.

Among other things which the prospectus is supposed to state is the amount or rate of commission (a) paid or payable direct to subscribers for shares in order to induce them to subscribe, or (b) paid or payable to agents, brokers, etc., to induce them to sell shares to the public. Very often the prospectus merely states that the letters patent authorize payment of a commission not exceeding a specified rate, but no particulars as to the actual arrangement are given. Often, particularly in the case of mining and oil companies, no commission is ostensibly paid. The shares are in the first instance privately sold or an option given to purchasers who sell to the public at an advance in price. Where this is done the price paid by the original purchaser can be discovered by inspection of the contract between him and the company. This contract the intending subscriber or purchaser of shares is entitled to examine. The prospectus is bound to state the dates of and parties to all material contracts and a place where the originals or copies may be inspected. This place is usually the head office of the company or the office of the brokers to the issue.

In the case of mining and other companies which may issue their shares at a discount, it is worth while to find out what discount is now authorized and what discount shares have been sold at in the past.

It must not be assumed from what has been said above that the devices resorted to by companies and persons selling shares for the purpose of withholding information are necessarily calculated to defraud or deceive intending subscribers. Some of the statutory requirements as to disclosure are extremely onerous and their strict observance may make it

very difficult to float an issue of shares or securities. It is the business of the intending shareholder to exercise what rights he has in order to acquaint himself with the facts. Such rights, however, are all too seldom exercised, even by those who propose to invest the savings of years. Unless the sum to be risked is regarded as unimportant, it is well for the investor to make the examination himself or incur the small expense of having it done for him.

It is perhaps unnecessary to add that the persons who perform the very important and sometimes difficult work of securing from the public capital for new enterprises are entitled to a reasonable return for their trouble and risk. What is a reasonable return depends on the circumstances. In the case of a small commercial corporation a commission of 10% or even 15% is not now considered excessive. In the case of more speculative enterprises, e.g., most mining and oil companies where a large part of the shares will only be disposed of by means of personal canvass, the rate is proportionately higher.

6. Blue sky laws.

In Manitoba, Saskatchewan and Alberta, a subscriber or purchaser of shares or securities should insist on evidence that the Sale of Shares Act (Blue Sky Law) has been complied with. He is entitled to this whether the company is locally incorporated or not. See Blue Sky Laws, p. 276, below.

Established companies.

As to companies falling within class (3) above, i.e., established companies which require further capital, the lines of investigation are similar. The investor will not, however, be entitled to have the

prospectus disclose all the information which is to be given in the case of new companies. An enquiry directed to any of the financial papers will bring a speedy reply and will usually give him most of the particulars required. An important point in the case of invitations of established companies for fresh capital is the purpose of the issue. The capital may be required for extensions to the business, or for the purpose of refunding a bond issue which has come due, or for the purpose of paying off bank loans, etc., etc. In every case the subscriber will have to make up his mind whether the existing financial condition of the company is such as to justify his investing his money.

CHAPTER IV.

PROMOTERS—COMMISSIONS—UNDER-
WRITING.**Promoters.**

Promoters are the persons who form and float a company and take the necessary steps to enable it to commence operations. Promoters stand in a fiduciary relationship to the company. The reason is that their position gives them an extensive power and influence in shaping and controlling the affairs of the company. One of the results of such relationship is that promoters are not entitled to make a profit at the expense of the company without fully and fairly disclosing it. It is not enough to disclose the profit to a board of directors who are mere nominees of the promoters. Disclosure must be made to an independent board or to the shareholders at large. The proper place for disclosure is in the prospectus.

Promoters have important duties to perform. They will have to see that the property or business taken over by the company is taken over at a reasonable figure; that the title to any assets is good; determine upon the capitalization of the company and the different kinds of shares and securities to be issued. The promoters will also settle the terms of the preliminary agreements for acquisition of assets and other matters; provide the executive officers and directors; see that the charter or memorandum of association and by-laws or articles are properly framed; assist in the preparation of the prospectus

and plan of financing. In the technical details in connection with many of the above matters the promoters will have the assistance and guidance of their legal advisers and of the brokers or other persons responsible for distributing the company's shares or securities to the public. For the risks they run and the services they render promoters properly insist on substantial remuneration. As there is considerable danger of liability to the company and others if legal requirements are not complied with, promoters should always seek competent advice.

See further on promoters Company Law pp. 204-217.

Commissions and underwriting.

Unless the company's shares or securities are privately taken up by the friends or associates of the promoters, it is necessary to make some arrangement for the sale of the shares or securities to the public. This may be effected in various ways. The company may sell a block of shares or bonds to a broker who will resell them to the public at a sufficient advance in price to compensate him for his trouble and risk. Often the company will itself make an offer to the public and, if possible, have the issue underwritten. Where this is done, persons (usually brokers) are found who agree to take up or find responsible persons to apply for such portion of the shares or securities offered as is not taken up by the public. In the case of small companies it is usually not possible to effect an underwriting arrangement. Often a firm of brokers will be employed to whom an exclusive continuing option is given to take up shares at a stated price. The brokers will resell the shares to the public. The

option is made liable to cancellation if the brokers do not take up and pay for a stipulated minimum amount of shares in any month during the continuance of the option. The brokers are usually allowed to apply sales in excess of the minimum required to be taken up in any month in reduction of the minimum required to be taken up and paid for during succeeding months. Sometimes the company will employ and pay salesmen to sell the shares to the public. All these modes of raising capital from the public usually involve the payment of a commission for taking up or agreeing to take up or procuring persons to subscribe for shares or securities. The payment of commission on the sale of shares involves, in effect, their issuance at a discount. This can only be done in accordance with statutory or charter provisions. Bonds, on the other hand, may be issued at a discount.

Dominion.

New Brunswick.

Quebec.

There is no express provision in the above Acts allowing the payment of commission. It is usual to take power in the letters patent on the issuance of shares or securities to employ brokers and underwriters and to provide for their remuneration by payment in cash or shares or securities. Under the Dominion Act the rate or amount of commission must be disclosed in the prospectus.

Ontario (s. 100).

A commission may be paid upon any offer of shares to the public if the requirements of s. 100 are

complied with. A commission may be paid not only to an agent for effecting sales but to the subscriber direct. Power to pay a commission must be taken in the letters patent. A common form is as follows:—

Upon any issue of shares, bonds, debenture stock, or other securities of the company, to employ brokers, commission agents and underwriters, and to provide for the remuneration of such persons for their services by payment in cash, or, with the approval of the shareholders, by the issue of shares, bonds, debenture stock or other securities of the company, or by the granting of options to take the same or in any other manner; also to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares, bonds, debenture stock or other securities of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares, bonds, debenture stock or other securities of the company; provided, that as regards shares, such commission shall not exceed twenty-five per centum of the amount realized therefrom.

The payment of the commission and the amount or rate of the commission must (a) be authorized by the letters patent, and (b) be disclosed in the prospectus, and (c) not exceed the amount or rate so authorized. The maximum rate which will be allowed in the letters patent is twenty-five per cent.

Manitoba (s. 44A).

The Act provides as follows:—

44A. It shall be lawful for a company to pay in cash, shares or otherwise, a commission or commissions to any person or persons in consideration of his or their subscribing or agreeing to subscribe either absolutely or conditionally for any shares in the company, or procuring or agreeing to procure subscriptions for any shares in the company; provided, however, that before any such commission shall be paid the directors shall have passed a by-law authorizing the payment of such commission and the amount or amounts, rate or rates per cent. of the same.

The payment of a commission as provided for in the above section does not constitute a sale at a

discount under section 32(4) or section 45. The rate of commission payable will have to be approved under the Sale of Shares Act (see p. 276, below). The Commissioner will not approve an excessive rate of commission.

Nova Scotia (s. 83).

A company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or for procuring or agreeing to procure subscriptions for any shares in the company, if the payment of the commission is authorized by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorized, and does not exceed ten per cent. of the price at which such shares are sold.

Saskatchewan (sec. 121).

A reasonable commission may be paid if the payment is authorized in the memorandum or articles and the commission does not exceed the amount so authorized and the amount or rate is disclosed in the prospectus. In Saskatchewan the requirements of the Local Government Board administering the Sale of Shares Act (see p. 276, below) in respect of the commission payable will have to be complied with. The Board will not sanction the payment of excessive commissions.

Alberta (s. 111).

A commission may be paid if the payment and the amount or rate are authorized by the articles and the commission does not exceed the amount or rate so authorized; provided that the payment and the

amount or rate are disclosed in the prospectus; and if there is no prospectus, by personal notice given to each party before he enters into any contract with the company in respect of shares. In Alberta the rate of commission payable will have to be approved under the Sale of Shares Act (see p. 277, below). The Board will not approve an excessive rate.

British Columbia (s. 108).

A commission may be paid if the payment is authorized by the memorandum or articles and the commission does not exceed the amount or rate so authorized and if the amount or rate is

(a) in the case of shares offered to the public for subscription, disclosed in the prospectus; or,

(b) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, and where a circular or notice, not being a prospectus, inviting subscriptions for shares is issued, also disclosed in that circular or notice. As to paying or allowing a discount to a subscriber for shares of a specially limited mining company, see p. 121, below.

Precautions to be observed.

Agreements for the underwriting of shares or securities should not be entered into without legal advice. It is well for the company to be satisfied beforehand on the following points:—

1. The plan to be followed in effecting sales and whether literature and forms used shall be submitted to the company in advance.
2. That honest salesmen will be employed.

3. That existing shareholders will not be canvassed, unless this is considered advisable.
4. Whether the proposed arrangement is to obligate the broker to take and pay for the shares or securities if the public does not, or whether the broker is merely to sell on commission.

CHAPTER V.

PRIVATE COMPANIES.

Dominion (s. 43C).

Ontario (s. 2 (c) ; 14, 35, 36, 43, 102 (2)).

British Columbia (ss. 2, 59-61, 266).

A private company is one which by its letters patent or memorandum or articles of association (as the case may be) :—

- (a) restricts the right to transfer its shares ; and
- (b) limits the number of its shareholders, exclusive of employees (and—Dominion—ex-employees who continue to be shareholders after the termination of their employment) to fifty ; and
- (c) prohibits any invitation to the public to subscribe for any of its shares or debentures.

Joint holders of shares are counted as a single shareholder. Such companies, which may be incorporated under the above Acts, are frequently formed in order to carry on, by means of a company with limited liability, the existing business of a firm or individual trader, or to carry out any undertaking or transaction involving financial risk, e.g., the promotion of another company. In addition, all sorts of commercial or trading companies may be incorporated as private companies. Among the special privileges enjoyed by a private company, which are noted below, the right of restricting the transfer of shares is of the greatest importance. It is often desirable that the company's shares should not get into the hands of outsiders or business competitors. By apt restrictive clauses in the charter (Dominion ;

Ontario) or memorandum or articles of association (British Columbia) this can be effectively prevented. The following is a simple form of restriction:—

No shareholder shall, without the express sanction of the directors to be signified by resolution passed by the board, transfer his shares.

For examples of more elaborate restrictive provisions see Forms pp. 485, 486.

Procedure for incorporation.

The procedure for incorporation of a private company is similar to that for a public company.

Dominion.

Ontario.

It will suffice in the application for incorporation to add the words “incorporation as a private company is sought with the following restriction on the transfer of shares (setting out the restriction in full).” The restriction should also be set out in the memorandum of agreement and stock book.

British Columbia.

The memorandum of association may be the same as for a public company, except that only two subscribers are required (s. 17). The articles must contain clauses restricting transfers; must limit the number of members (exclusive of persons in the employment of the company) to fifty; must prohibit any invitation to the public to subscribe for shares or debentures. The usual article fixing the minimum subscription is not required, for s. 31 of the Act does not apply; nor must there be any provision for share warrants, which would nullify the restriction on transfers.

Conversion of private company into public company.

The following are the statutory provisions:—

Dominion (s. 43 C (4)).

(4) A private company may, subject to anything contained in the letters patent and supplementary letters patent, by passing a resolution at a special general meeting of the company called for that purpose and by filing with the Secretary of State of Canada such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures and by obtaining supplementary letters patent confirming the resolution, turn itself into a public company. Imp. Act, 1908, s. 121 (2).

Ontario (s. 14).

14. A private company may be converted into a public company by supplementary letters patent if

- (a) A resolution determining that it is expedient that the company should be so converted is passed by a two-thirds vote of the shareholders at a general meeting of the company called for the purpose of considering the resolution, and
- (b) The company files with the Provincial Secretary such a statement in lieu of a prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures or a prospectus together with such a statutory declaration as the company if a public company would have had to file before commencing business. 2 Geo. 31, s. 14; 3-4 Geo. V. c. 18, s. 33 (5).

British Columbia (s. 60).

60. (1) Subject to anything contained in the memorandum or articles, a private company may for the purpose of being converted into a public company pass a special resolution altering its memorandum and articles so as to exclude the provisions inconsistent with a public company.

(2) The resolution shall be filed with the Registrar, but shall not take effect until he issues under his seal of office a certificate that the company is entitled to carry on business as a public company.

(3) The Registrar shall not issue the certificate unless:—

- (a) The company proves by the statutory declaration of a director that it has carried on active business for not less than two years; or

- (b) The company files with the Registrar a statement in lieu of prospectus according to Form 4 in the Second Schedule or a prospectus complying with this Act, and a statutory declaration according to Form 6 or 8 in the Second Schedule, as the case may be.
- (4) Every company requiring to file a statement in lieu of prospectus or a prospectus pursuant to this section shall:—
 - (a) If it has a share capital, be subject to and comply with section 31 (except clauses (b) and (c) of subsection (1) and subsection (6)) and sections 33 to 36.

A public company may be converted into a private company by special resolution in manner provided by s. 59.

Privileges, exemptions, obligations.

Dominion.

A private company is not required to file a statement in lieu of prospectus (s. 43C-2); nor is it subject to any restriction on appointment of directors (s. 75).

Ontario.

A private company enjoys or is subject to the following privileges, exemptions and obligations:

1. Not being subject to Part VIII, it may commence business and exercise its borrowing powers immediately after incorporation. It need not obtain a certificate that it is entitled to commence business.

2. There is no restriction on allotment of its shares, debentures or debenture stock; it need not file a statement in lieu of a prospectus (s. 102 (2)).

3. Not being subject to Part VIII, it need not file any return of allotments of its shares under s. 116.

4. It need not file or forward to shareholders a statutory report. The provisions relating to the first

meeting of the company appear in s. 43 (see p. 25, above).

5. Every private company is to have on its seal the words "Private Company" and upon every share certificate issued by the company there shall be distinctly written or printed the same words (s. 35). A penalty is imposed on directors and officers for a breach of this requirement (s. 36).

British Columbia.

A private company need not have more than two members (s. 266). It is exempt from restrictions on appointment and advertisement of directors (s. 84); restrictions as to allotment, commencement of business and exercise of borrowing powers (s. 31); necessity for forwarding and filing a statutory report (s. 34); provisions entitling holders of preference shares and debentures to receive and inspect balance sheets and reports (s. 115); requirement of including a balance sheet in the annual summary (s. 122 (3)); the prohibition against making a loan to a shareholder (s. 16).

The Act contains the following provision which applies if the company fails to comply with the conditions of its memorandum or articles:—

61. If a company fails to comply with the provisions included in its memorandum or articles which constitute it a private company, it shall cease to be entitled to the privileges and exemptions conferred on private companies under sections 115, 122, 176, and 266, and thereupon those sections shall apply to the company as if it were not a private company;

Provided that the Court, on being satisfied that the failure to comply with the provisions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested, and on such terms and conditions as may seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid. 1914, c. 12, s. 14; [3 & 4 Geo. V., c. 25, s. 1].

Close corporation.*New Brunswick.*

The New Brunswick Act contains the following provision whereby a company may become a close corporation and restrict the transfer of its shares:

74. A company by by-law passed by the directors and unanimously confirmed by all its shareholders at any general meeting may provide that the company shall be a close corporation and that the shares of the capital stock shall not be transferable to any person not being a shareholder at the time such transfer is proposed to be made, until the name of such proposed transferee is submitted to the directors and they have given consent to such transfer or upon such other terms or conditions as may be provided by such by-law, and in any such case upon any shareholder desiring to dispose of his shares, it shall be lawful for the company to accept a surrender of the same as may be provided for by such by-law, and forthwith to re-issue the same and pay for his shares the amount which shall have been received upon such re-issue, such by-law in all cases of close corporations to be noted on the stock certificate and such stock certificate shall not be negotiable but shall be evidence only against the company that the party to whom the same is issued is at the time of the issue thereof a holder of shares in the company to the amount named in the certificate.

CHAPTER VI.

SHARE CAPITAL.

The amount of the share capital is fixed in the letters patent or memorandum of association of the company. The amount so fixed is called the "authorized capital" or "nominal capital" and is divided into shares, each of a definite amount or par value, expressed in currency. For ordinary commercial corporations \$100 is a common par value. For mining companies and oil companies \$1 and \$5 shares are usual. In some jurisdictions (e.g., Ontario) the par value of shares may be expressed in foreign currencies, e.g., pounds sterling or francs at a fixed rate of exchange. Shares of no nominal or par value may be created under the Acts of the Dominion, Quebec, and New Brunswick (see pp. 6, 93). In jurisdictions where incorporation is granted on filing of memorandum and articles each share must be designated by its appropriate number, called its "denoting number." This requirement has been dropped in Nova Scotia. The share capital may be increased or decreased, or shares may be consolidated or subdivided by following the appropriate procedure under the governing Act (see pp. 238 ff., below).

The authorized capital, i.e., the amount which the company may issue, should be distinguished from the subscribed capital, i.e., the amount of shares taken or agreed to be taken by subscribers; and from the issued capital, i.e., the amount of shares issued and allotted; and the paid-up capital, i.e., the amount

paid up by subscribers. Some Acts provide in effect that where advertisements, etc., state the capital of the company, the amount must be the subscribed capital, unless it is stated that the authorized capital is referred to (see p. 61, above). As to the principles according to which the amount of the share capital is fixed by promoters see p. 61, above.

Preference shares.

Shares may be all of one class or may be divided into common and preference shares; and the latter may, though this is not usual, again be divided into different classes with different priorities and rights. Preference shares have of recent years come into great vogue as a means of raising capital from the public. From the point of view of the company they have certain advantages over the alternative method of raising capital by an issue of bonds. Thus, if the company, through lack of earnings, fails to pay its preference dividend, its undertaking does not become subject to sale, foreclosure or receivership proceedings, as would be the case if the company failed to meet interest payments on its bonds. The company's assets, moreover, remain unencumbered and money may subsequently be borrowed, if need arises, on the security of the assets by mortgage or an issue of bonds.

The preferences and priorities which may be attached to preference shares are capable of considerable variation. As regards dividend, this may be cumulative or non-cumulative. If cumulative, then if the dividend is not earned and paid in any year or years, the arrears have to be paid before the common shareholders receive anything. If non-cumulative, the preference shareholders are entitled

only to have a dividend at the stipulated rate declared and paid out of the profits of each year. If these are insufficient in any year to pay the dividend attributable to that year, the preference shareholders have no right to compel the company to resort to profits in subsequent years to make up the deficiency. Obviously non-cumulative preference shares are not a desirable security.

Preference shares, further, may have the right to participate fully with the common shares in profits after the fixed preferential dividend has been paid and a stated dividend has been paid on the common shares; or the right of participation may be limited or wholly withheld. Such a right of participation in profits up to, e.g., an extra two per cent. is frequently introduced to add a speculative feature, thereby making the shares more attractive to the public. The same result is accomplished by having some of the promoters or vendors to the company who are large holders of common shares give a bonus of common shares to each subscriber for preference shares.

A right of priority over other shareholders to a return of capital upon a winding-up or realization of assets is usual and desirable. Whether the preference shareholder is entitled to participate further in surplus assets depends upon the wording of his security. In the absence of express words to the contrary, preference shareholders are entitled to such further right of participation.

The right to vote may be left intact, but is usually restricted in its exercise until default for a specified period in payment of the preferential dividend; sometimes the right is conferred, after default in payment of the preferential dividend, to elect a

stated number of directors or exercise other specified control over the management of the company.

As preference shares now frequently take the place of bonds as a means of obtaining capital from the public, it has become common to introduce some of the safeguards appropriate to a mortgage security, e.g., prohibition of sale or lease of the undertaking of the company, or a substantial part thereof, without the concurrence of a stated proportion of the preference shareholders. Similar provisions as to creating bonds or other secured indebtedness; limitation of issue and prohibition of issue of preference shares ranking in priority to or *pari passu* with existing preference shares, etc.

The above do not exhaust the list of preferences and priorities which may be granted, but comprise some of those most commonly found. For a form of preference by-law see App. Form 7. See further Forms pp. 474ff.

Creation of preference shares.

(a) Companies incorporated by letters patent.

Dominion (ss. 47-49; 7B).

Ontario (ss. 78 (2)-81).

Quebec (arts. 5989; 5967a).

Manitoba (ss. 71 (e)-75).

New Brunswick (ss. 53-55, 127).

Preference shares may be created in either of two ways: One of these is to introduce an appropriate provision in the petition for incorporation, the preference shares being then created by the letters patent, which set out all the provisions relating to the preference shares. The other way is to have a by-law passed by the directors and confirmed by

the proportion of the shareholders required by the governing Act. This approval of the shareholders must be given at a special general meeting called for the purpose of considering the by-law. For a discussion of special general meetings see p. 164, below. In some jurisdictions (Dominion; Ontario) the consent in writing of the requisite proportion of the shareholders may be substituted for a shareholders' meeting. For examples of preference share provisions to be inserted in the letters patent see Forms pp. 353 ff. For forms of preference share by-laws see App. Form 7 and Forms pp. 474 ff.

The following special requirements should be noted:—

Ontario.

Where the by-law provides for redemption or repurchase of preference shares by the company, it must be confirmed by supplementary letters patent (for procedure see p. 236, below).

Quebec.

The by-law must be sanctioned by the Lieutenant-Governor as well as confirmed by the requisite majority of shareholders.

Manitoba.

If the by-law provides for redemption of preference shares, it does not require confirmation by supplementary letters patent, unless it also provides for cancellation of the shares redeemed (s. 75 (1)).

Dominion.

Quebec.

New Brunswick.

If power is taken by the letters patent to issue shares of no par value and it is also proposed to issue

preferred shares with a "preference as to principal" (i.e., a preference as to return of capital in a winding-up or realization of assets), then the letters patent must state inter alia:—(a) The amount of preferred shares having such preference; (b) The particular character of such preference; and (c) The amount of each preferred share. The amount must be \$5 or some multiple of \$5, but not more than \$100. As to shares of no par value see further p. 95, below.

(b) Companies incorporated by registration.

Nova Scotia (Table A, 10, 11).

Saskatchewan (Table A, 1, 2).

Alberta (s. 62).

British Columbia (Table A, 3, 4).

The division of the capital into several classes of shares may be effected in the memorandum, the latter specifying the provisions attaching to the preference shares. More commonly (and this is the better course) power is taken in the memorandum to divide the shares into several classes, without specifying the provisions in detail. Or else the memorandum may be silent. In both of these cases the division into preference and common shares will be effected in the articles, which set out the provisions relating to both classes. If no provision has been made in either memorandum or articles for issuing preference shares, the directors can only create preference shares with the sanction of a "special resolution" of the company (see p. 177, below).

Modification of preference shareholders' rights.

Whether the rights of preference shareholders may be modified depends on the terms of the issue,

the wording of the documents in which these rights are defined, and the provisions of the governing statute. The same observations apply to the question whether the company is entitled to create further preference shares, ranking in priority to, or *pari passu* with, existing preference shares. As a general rule, the power to modify rights of preference shareholders is desirable from the point of view of the company and not objectionable from the point of view of the shareholders, provided their interests are properly safeguarded. This may be done by providing that no modification may be made without the consent of a substantial majority of the preference shareholders, e.g., seventy-five per cent. in value. A power to modify rights does not enable a majority to destroy such rights altogether.

The requirements in respect of procedure for modification of preference shareholders' rights are as follows:—

Dominion.

Ontario.

Quebec.

Manitoba.

New Brunswick.

If the provisions are contained in the letters patent they can only be modified by supplementary letters patent confirming a by-law embodying the amendment. If the original provisions exist in the form of a by-law and are not contained in letters patent, an amending by-law will suffice, except in Ontario and New Brunswick, where even in such a case supplementary letters patent are required. Upon the application for supplementary letters

NOTE.—Modification may now also be effected under The Bankruptcy Act Amendment Act, 1922, s. 12, in cases where that Act applies.

patent, the consent of *all* the preference shareholders will have to be shown, unless the original provisions authorized modification by a specified majority of the preference shareholders. As to the procedure for obtaining supplementary letters patent see p. 236, below.

Nova Scotia.

Saskatchewan.

Alberta.

British Columbia.

If the rights pertaining to preference shares are set out in and defined by the memorandum, then, unless the latter gives power to modify these rights, they are unalterable, except in jurisdictions whose Acts permit the reorganization of share capital or give power to the company to compromise or make an arrangement with its shareholders.* In both cases the sanction of the Court is required. Provisions of the former kind are found in Nova Scotia (s. 45), British Columbia (s. 45), and Saskatchewan (s. 56), and of the latter in British Columbia (s. 132). Commonly the memorandum itself, or the memorandum by reference to the articles, embodies a provision for modification, e.g., by consent in writing of holders of sixty-five per cent. of the issued preference shares, or with the sanction of an extraordinary resolution of the holders of each class of shares affected.

When the rights attaching to preference shares are defined in the articles, the provisions for modification, if any, will be found in the articles, and must be followed. If the articles contain no provisions for modification, then, apart from any contractual rights of the preference shareholders to

* See, however, p. 88n, above.

the contrary, the rights may be varied by means of the statutory power to change the articles by special resolution (see p. 177, below). As it may be necessary to have the right to modify preference share provisions, and since it may be sometimes essential to exercise the right quickly, the provisions in this regard which should be contained in the articles require to be framed with great care.

Redemption and re-purchase of preference shares.

In some jurisdictions the issue of preference shares subject to redemption or re-purchase by the company is specifically authorized. Where there is no statutory authorization such redemption or re-purchase can only take place in a proceeding to reduce capital (see p. 240). The following Acts contain special provisions.

Ontario (ss. 80-81).

A by-law providing for re-purchase or redemption of preference shares must be confirmed by supplementary letters patent because it has the effect of reducing the company's capital (s. 80 (2)). Unless preference shares are issued subject to redemption they cannot be redeemed without the consent of the holders (s. 81).

Quebec (art. 5989).

A preference share by-law may provide for the purchase of preference shares by the company. The by-law, like other preference share by-laws passed pursuant to art. 5989, must be approved by a vote of at least three-fourths of the shareholders, present in person or by proxy at a general meeting of the company duly called for considering the same, and representing at least two-thirds of the subscribed stock of the company, and sanctioned by the Lieutenant-Gov-

error (sub-sec. 3). Whenever the total amount of the purchase or purchases of preference shares reaches or exceeds ten per cent. of the capital stock of the company, notice thereof must be given to the Provincial Secretary within thirty days from that time (sub-sec. 4). There is a penalty for failure to comply with the provision. The Provincial Secretary advertises the notice in accordance with the subsection at the expense of the company in the official Gazette.

Manitoba (s. 71 (e)-75).

The by-law may provide for the purchase or redemption of preference shares. Unless preference shares are issued subject to redemption, they cannot be redeemed without the consent of the holders. The directors may pass by-laws providing for the purchase or acquisition by the company of such stock, or parts thereof, with the consent of the holders, and for the cancellation of the stock so purchased or acquired, and for the reduction pro rata, according to the amount of stock so cancelled, of any reserve set apart or required to be set apart in respect of such preference stock. Any by-law under the foregoing provisions which has the effect of decreasing the capital stock is subject to the provisions of secs. 41-43 of the Act dealing with reduction of capital, which involves confirmation of the by-law by supplementary letters patent. But no by-law providing for redemption of preference shares is subject to secs. 41-43 unless the by-law also provides for the *cancellation* of the shares redeemed.

Nova Scotia (ss. 41, 46 ff.).

Where a company is authorized by its memorandum to issue redeemable preference shares, it may

redeem all or any of such preference shares in the manner provided by the terms of issue. No such redemption, however, is to be made without an order of the Court, which must be registered with the registrar.

If the company is so authorized by its articles, it may alter the conditions of its memorandum and convert any part of its unissued shares into preference shares redeemable by the company. A special resolution and the sanction of the Court are required.

Preference share certificates.

The preference share certificate should set out, in addition to the usual details (as to which see p. 104, below), the respective authorized amounts of common and preference share capital, the number of shares of each class, the par value of each share, the rate of dividend and whether it is cumulative or not. In some jurisdictions it is also required to set out further particulars, in which case it will be found convenient to state the preference share provisions in full on the reverse side of the certificate, referring to them on the face of the certificate as being so stated (see App. Forms 8, 9). Particulars of these additional requirements are as follows:—

Dominion (s. 7B).

Quebec (art. 5967a).

New Brunswick (s. 127 (2)).

Where power is taken to issue shares of no par value, if preference shares having a preference as to principal are issued, the certificate must state briefly (a) the amount the holder is entitled to receive for principal from the company's surplus assets in preference to holders of other shares; and (b) any other

rights or preferences the holders of the preference shares are entitled to.

Ontario (s. 80 (1)).

Manitoba (s. 73).

Any term of any preference share by-law limiting or restricting the rights of holders must be *fully* set out in the certificate, otherwise the holder's rights are not to be deemed to be qualified.

Quebec (art. 5989).

The provisions of any by-law granting rights or privileges to the holders of preference shares, or restricting those conferred upon them by law, must be set out *at length* in the certificate of such shares, and, if not so set out, such rights, privileges or restrictions shall be deemed non-existent.

Shares of no nominal or par value.

Dominion (s. 7B).

Quebec (art. 5967a).

New Brunswick (s. 127-129).

It has been seen above (pp. 6, 15) that the share capital of the company must be expressed as a sum of money, e.g., \$500,000, divided into shares of a certain fixed par value, e.g., 5,000 shares of \$100 each. In the example each share does not really represent in value \$100, but only one five-thousandth part of the net assets of the company (assuming that all the shares have been issued), whatever they may be, from time to time. The above jurisdictions have introduced provisions whereby the issuance of shares which have no par value is authorized. Thus, a company may be incorporated with, e.g., 1,000 shares of no par value. Each share certificate states only the

number of shares authorized and the number of such shares represented by the certificate. If the number of shares authorized has been issued, then the certificate indicates the proportionate claim of the holder upon the assets and profits of the company from time to time. For the form of share certificate see App. Form 10.

The price or consideration for which such shares may be issued by the company is fixed in any one of three ways:—

(a) By the letters patent; or

(b) by the board of directors pursuant to authority conferred in the letters patent; or

(c) Failing any provision in the letters patent, then by the consent of the holders of two-thirds of each class of shares then outstanding given at a meeting called for that purpose in such manner as is prescribed by the by-laws.

Method (b) is the most convenient. If shares are issued as permitted by the statute, the holder takes them as fully paid and is not liable to the company or its creditors in respect thereof. In the case of par value shares, the company may not issue them for less than their face value. Thus, a \$100 share may not be issued for, say, \$50. Obviously this rule has no application to no par value shares and the latter can be issued at such price as may be deemed desirable by the directors.

The following points should be noted:—

1. The power to issue no par value shares must be taken in the letters patent (or by supplementary letters patent).

2. The letters patent must state the amount of capital with which the company will carry on business. This amount is fixed as follows:—If there are

no preference shares with a preference as to principal, the amount of capital is five dollars or some multiple of five dollars for each share authorized to be issued. If preferred shares with a preference as to principal are authorized, their total par value must be added. In no event must the amount so fixed be less than five hundred dollars.

3. The company must not begin to carry on business or incur debts until the amount of capital stated in the letters patent has been fully paid in money, or in property taken at its actual value. This requirement is in lieu of the requirement for companies with par value shares, that ten per cent. of the authorized capital must be subscribed and paid for (Dom. s. 26; Que. art. 5972).

If a director assents to the creation of any debts in violation of the above prohibition, he becomes personally liable for the debts.

4. The declaration of a dividend which reduces the amount of the capital below the amount stated in the letters patent as the amount with which the company will commence business is forbidden. If a dividend so forbidden is declared, all the directors in whose administration it was declared, except those who had their dissent entered in the minutes at the time, become liable to the company and its creditors for the loss sustained by reason of the dividend.

5. Every certificate for no par value shares must have plainly written or printed on its face the number of shares which it represents and the number of such shares which the company is authorized to issue, and must not express any nominal or par value of such shares.

6. Certificates of preferred shares having a preference as to principal must briefly state (a) the

amount the holder shall be entitled to receive on account of principal from the company's surplus in preference to the holders of other shares; and (b) any other rights or preferences given to the holders of such shares.

Shares of no par value seem to be growing in popularity, but a company which proposes to sell such shares to the public as incident to its financing should first make careful inquiry as to whether under the particular circumstances, having in mind the financial position of the company and the nature of its business, such shares will be attractive to the public.

A company with shares of no par value can convert them into par value shares by by-law confirmed by supplementary letters patent. Shares of no par value are in common use in the United States where statutory provisions similar to the above are in force. The provisions authorizing such shares are the same in the different Acts. The Dominion section reads as follows:—

7B (1) Upon the formation or reorganization of any company, the letters patent may provide for the issue of the shares of the capital stock of such company without any nominal or par value, except in the case of preferred stock having a preference as to principal; and,

- (a) If such preferred stock or any part thereof has a preference as to principal, the letters patent shall state the amount of such preferred stock having such preference, the particular character of such preference, and the amount of each share thereof, which shall be five dollars or some multiple of five dollars, but not more than one hundred dollars; and,
- (b) The letters patent shall set out the amount of capital with which the company will carry on business, which amount shall be not less than the amount of preferred stock (if any) authorized to be issued with a preference as to principal, and in addition thereto a sum equivalent to five dollars or to some multiple of five dollars for every

share authorized to be issued other than such preferred stock; but in no event shall the amount of such capital be less than five hundred dollars.

(2) Such statement in the letters patent shall be in lieu of any statements prescribed by this Act as to the amount or the maximum amount of the capital stock or the number of shares into which the same shall be divided, or the amount or the par value of such shares.

(3) Each share of the capital stock without nominal or par value shall be equal to every other share of the capital stock, subject to the preferences given to the preferred shares, if any, authorized to be issued. Every certificate of shares without nominal or par value shall have plainly written or printed upon its face the number of such shares which it represents and the number of such shares which the company is authorized to issue, and no such certificate shall express any nominal or par value of such shares. The certificates of preferred shares having a preference as to principal shall state briefly the amount which the holder of any of such preferred shares shall be entitled to receive on account of principal from the surplus assets of the company in preference to the holders of other shares, and shall state briefly any other rights or preferences given to the holders of such shares.

(4) The issue and allotment of shares authorized by this section, other than shares of preferred stock having a preference as to principal, may be made for such consideration as may be prescribed in the letters patent, or as may be fixed by the board of directors pursuant to authority conferred in the letters patent, or if the letters patent do not so provide, then by the consent of the holders of two-thirds of each class of shares then outstanding given at a meeting called for that purpose in such manner as is prescribed by the by-laws. Any and all shares issued as permitted by this section shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the company or to its creditors in respect thereof.

(5) A company to which this section applies shall not begin to carry on business nor incur any debts until the amount of capital stated in the letters patent has been fully paid in money, or in property taken at its actual value. In case the amount of capital stated in the letters patent is increased as provided by this Act, such company shall not increase the amount of its indebtedness then existing until it has received in money or property the amount of such increase of its stated capital. Any of the directors of the company who assent to the creation of any debt in violation of this section shall be liable jointly and sever-

ally for such debt; but no action shall be brought against any director unless within one year after the debt has been incurred the creditor has served upon the director written notice of intention to hold him personally liable for such debt.

(6) A company to which this section applies shall not be subject to section 26 of this Act.

(7) A company to which this section applies shall not declare any dividend which reduces the amount of its capital below the amount stated in the letters patent as the amount of capital with which the company will carry on business. In case any such dividend shall be declared, the directors in whose administration the same shall have been declared, except those who may have caused their dissent therefrom to be entered upon the minutes of such directors at the time, or who were not present when such action was taken, shall be liable jointly and severally to such company and to the creditors thereof to the full amount of any loss sustained by such company or by its creditors respectively by reason of such dividend." 7-8 Geo. V. c. 25, s. 4.

New Brunswick.

The above Act contains the following additional provision:—

129. Any company formed or reorganized pursuant to section 127 may apply for supplementary letters patent in the manner provided in sections 58 to 63 inclusive hereof so as to increase or to reduce the number of shares which it may issue, or so as to increase or to reduce the amount of its stated capital.

CHAPTER VII.

SHARES.

A share is an aliquot separate integral part of the capital of the company. It has been seen above (p. 83) that the capital may be divided into shares of more than one class, e.g., preference and common shares. In the absence of special provisions, each share is of the same character and is possessed of the same attributes as any other share. A person may become a shareholder in any of the following ways:—

Acquisition of shares.

1. By subscribing to the memorandum of agreement and stock book or the memorandum of association, as the case may be, before the company is incorporated. The subscriber thereby agrees to take the number of shares set after his name. Upon incorporation the subscriber automatically becomes the holder of such shares. Such a subscription can not be repudiated.

2. By entering into a contract with the company to take shares. Such a contract may be verbal, but is usually in the form of a written subscription or application, made personally or by an agent, addressed to the company and accepted by it.

The acceptance takes place by allotment of the shares (see p. 102) and notification of such allotment to the applicant. Until such notification has been given to the applicant he can withdraw. The notification may be verbal or by conduct or, as is

usual, in writing forwarded by post. In the latter case the notification is effective from the time of posting the letter, even though the letter never reaches the addressee. Withdrawal by the applicant, to be effective, must reach the company before the notice of allotment is posted. An application under seal cannot be withdrawn.

For form of application and notice of allotment see App. Forms 11 and 13. It is usual to issue to the subscribers a receipt for the amount paid on application (see App. Form 12).

Even where an application has been made to, and accepted by, the company and shares allotted and the applicant notified, he may still be entitled to be relieved of his subscription under certain circumstances. Thus, for example, his subscription may have been obtained by fraud or misrepresentation (see p. 54); or his application may have been made subject to a condition to be performed before the company became entitled to allot his shares, *e.g.*, a stipulation by the subscriber that a definite amount should have been subscribed by other persons before the subscriber became bound. So also if the application is for preference shares and common shares are allotted, or the preference shares allotted have not been validly created. It has also been seen above that in some jurisdictions, if statutory restrictions against allotment have not been complied with, a subscriber is entitled to get his money back pp. 31, 33); and that if a subscriber on a public offering of shares has not received a prospectus he is entitled to withdraw his subscription (see p. 59). In every case where a subscriber feels that he has been misled, or is entitled to be relieved, he should seek competent legal advice at once, for his rights may be

impaired or lost by delay or the taking of some false step.

Persons frequently also become shareholders in pursuance of a contract to sell assets to, or perform services for, a company in consideration of the issuance by the company of fully paid shares. Such a contract may be, but is not necessarily, accompanied by an application to take the shares agreed to be issued under the contract. See further as to the issuance of shares for a consideration other than cash, p. 108, below.

3. By taking a transfer of shares. A person may become a shareholder by purchase of shares from another existing shareholder. The latter transfers his shares to the purchaser by endorsing and delivering the share certificate to him. Thereupon, after the change of ownership has been registered in the books of the company, the purchaser becomes a shareholder in the place of the transferor. See further on transfer of shares, p. 128, below.

4. By transmission upon the death of a shareholder. Upon the death of a shareholder, his executors or administrators become entitled to have themselves entered on the company's share register in the place of the deceased. See on transmission of shares, p. 132, below.

5. A person may also be deemed to be a shareholder by allowing his name to be on the register of shareholders or otherwise holding himself out or allowing himself to be held out as a shareholder.

Allotment of shares.

The usual form of application for shares provides that the applicant shall take a specified number of shares, or such smaller number as may be

allotted. Allotment means the acceptance by resolution of the board of directors of the application for shares. The directors, so soon as the statutory pre-requisites (if any) applicable as to filing a prospectus or statement in lieu of prospectus and the restrictions (if any) as to allotment have been complied with, should pass a resolution allotting the shares applied for. In the case of companies incorporated by letters patent, the general by-laws should provide that allotment be by resolution of the board; in the case of companies incorporated by memorandum and articles, the provisions governing allotment will be found in the articles. For form of resolution allotting shares, see App. Form 14. The secretary should notify the allottees (see App. Form 13), keeping evidence of the fact of due posting of the notice. The names of the allottees with other particulars will then be entered in the company's share register.

The duties of the directors in allotting shares must be exercised *bona fide* in the best interests of the company, *e.g.*, they may not allot to themselves a disproportionate number of shares in order to gain the control of the voting power of the company. While the directors may not be bound in all cases to offer to existing shareholders *pro rata* any unissued treasury shares, it is the proper and safe course in any event where the shares are worth more than par. Directors are not bound to issue shares at a price above par because they are quoted at a premium; and it is not uncommon for the directors to make a further issue of shares to existing shareholders at a price below the market price. In most jurisdictions it is illegal to issue shares at a discount, *i.e.*, against payment of less than their par value.

Where this is permitted, statutory formalities must be observed (see p. 110). The issue from treasury of bonus shares is illegal; nor can fractions of shares be issued, for a share is indivisible. Shares may be issued for money, or, subject to observance of statutory formalities, for money's worth, *i.e.*, assets, services or some other valuable consideration (see p. 108).

Return of allotments.

Ontario (s. 116(1)).

Saskatchewan (s. 96).

Alberta (s. 110).

In Ontario, whenever a company which files a prospectus, and in Saskatchewan and Alberta, whenever any company makes any allotment of its shares, it must file with the Provincial Secretary within *two* months (Ontario), or with the Registrar within *one* month (Saskatchewan; Alberta):

1. A "return of allotments" stating the number and nominal amount, *i.e.*, par value of the shares comprised in each allotment; the names, addresses and descriptions of the allottees; and the amount (if any) paid or due and payable on each share; and

2. In the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale or for services or other consideration in respect of which such allotment was made, and a return stating the number and nominal amount of the shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

If default is made in complying with the above requirements, a penalty is imposed on every director, manager, secretary or other officer of the company who is knowingly a party to the default. In Saskatchewan, the company or any person liable for the default; in Alberta, the company or any person interested in the shares, may apply to the Court for relief.

The shares taken by the incorporators need not be included in the return, unless they have been allotted, which is usual but not necessary. As an original contract must be filed, it will be found convenient to execute vendors' contracts in triplicate.

For form of return see App. Form 15.

British Columbia (s. 125).

In this province more elaborate provisions are in force. If there is no written contract, exact particulars of the contract must be filed. If default is made, the Court may extend the time for complying with the section. The form of return must be in accordance with Form 17 in the schedule to the Act.

Share certificates.

As soon as possible, after allotment and payment in full for shares, share certificates should be delivered to the shareholders. The share certificate is sealed with the corporate seal, signed by the proper officers authorized by the by-laws or articles; and where the company has a transfer agent and registrar, the certificate will be countersigned by him. The certificate will state the number of shares it represents, and in some jurisdictions also the denoting numbers of the shares, and will also state the amount paid on the shares. Usually certificates are only issued after shares have been fully paid. Where

shares of more than one class are issued, a different colored share certificate may be used for each class. For form of common share certificate see App. Form 16; preference share certificate App. Forms 8 and 9. Preference share certificates should state details as to rate of dividend, etc. (see p. 92). As to share certificates where shares have no par value, see p. 95; and share certificates of mining companies issued at a discount (pp. 112 ff.); and share certificates of a private company in Ontario (p. 80).

A share certificate is in most jurisdictions (Dominion, Manitoba, New Brunswick are exceptions) made *prima facie* evidence of the title of the person named therein to the shares, but does not give an absolute title to the shares. A person taking a certificate endorsed in blank by the shareholder named therein may find the company has a lien on the shares preventing their transfer, or there may be restrictions on the right to transfer shares which will prevent him getting himself registered. These questions are considered further under "transfer of shares" at p. 128, below. If a person has obtained a certificate by presenting to the company a forged transfer, even though he has acted innocently, he can not keep the shares and must indemnify the company against the consequences of acting on the transfer. If the certificate, which he gets is itself a forgery, the company is not liable on it. Generally, in order to be able to insist that the company is bound by what is stated in the certificate, the holder will have to show that he acted on the company's representation by selling the shares or that he bought the shares on the faith of the certificate issued to his vendor.

Loss, destruction or defacement of share certificates.

The by-laws or articles of the company ordinarily provide that in the case of loss, destruction or defacement of a share certificate, a new certificate may be issued on payment of a small fee and compliance with the requirements of the directors as to evidence of loss, etc., and indemnity. It is usual and proper to require the bond of a surety company. The amount of the bond required is usually double the par value of the shares represented by the lost certificate. For the documents required in this connection, see Forms, p. 160. In some jurisdictions the right to obtain a new certificate is given by the Act, *e.g.*, Ontario, s. 55; Quebec, art. 5991*a*; British Columbia, s. 74(3).

Share warrants.

Dominion (s. 68A).

Ontario (ss. 63-71).

Quebec (art. 5991*b*).

New Brunswick (s. 76).

Nova Scotia (s. 38).

Saskatchewan (ss. 49-50).

Alberta (ss. 72-77).

British Columbia (s. 80).

A company, if authorized by its letters patent or supplementary letters patent, or (if incorporated by registration) if authorized by its articles, may issue warrants under its corporate seal, certifying that the bearer of the warrant is entitled to the shares specified therein. Such warrants, which are called "share warrants," may only be issued in respect of fully paid shares. Share warrants are transferable by delivery without registration. The dividends are usually made payable by coupons attached to the

warrant. It should be noted that where it is desired to issue share warrants power must be taken in the letters patent or in the articles. Share warrants are not in common use in this country.

Liability of shareholders.

The sole obligation of the shareholder as such is to pay the amount owing in respect of his shares, and this obligation is primarily one due to, and enforceable by the company. The obligation of the shareholder is to pay up the full par value (or subscription price not less than par) of his shares, or, in the case of no par value shares, the amount or price at which the shares are issued. Shares may be paid for in money or by any other valuable consideration. As a general rule it is illegal to issue shares at a discount, *i.e.*, against payment of less than their par value. If this is attempted, the shareholder will remain liable to pay up the balance in insolvency or winding-up proceedings, though the company itself could not compel him to pay more than he had agreed. To this rule there are certain exceptions. In some jurisdictions mining companies, and in other jurisdictions all companies, are permitted to issue their shares at a discount subject to the observation of statutory requirements involving publicity (see p. 110). By means of shares of no par value, the price of which may be fixed by the directors in accordance with what they consider the public will be willing to pay for them, the same result is accomplished. Moreover, in some jurisdictions, a company is authorized to pay a commission to any person in consideration of his subscribing or agreeing to subscribe for shares. Where the commission is thus paid to the subscriber direct, the shares are, in effect, issued to him at a discount. In Ontario the

power to do this must be taken in the letters patent and the rate of commission, which must not exceed that authorized, must be disclosed in the prospectus. See Ontario Act s. 100; Nova Scotia, s. 83; Saskatchewan, s. 121; Alberta, s. 111; British Columbia, s. 108. As to the personal liability which shareholders incur where the number of shareholders is reduced below the legal minimum, see p. 274, below.

Issue of shares for consideration other than cash.

It is a transaction of frequent occurrence for a company to issue paid-up shares for a consideration other than cash, *e.g.*, for land, plant or other assets (see p. 27, above, Vendors' agreements). In every case a formal written contract should be entered into between the vendor and the company; executed in duplicate (or in triplicate where an original is required to be filed in a public department), and authorized or ratified by the appropriate corporate action required by the governing Companies Act. For form of contract, see App. Form 6.

On the delivery to the company of transfers and conveyances of the assets purchased, the shares should be allotted to the vendors, or their nominees if the contract so provides, and the vendors so require.

In most jurisdictions the contract of sale must be filed with the Provincial Secretary or Registrar. Failure to do this in some jurisdictions leaves the shares not properly paid up and the shareholder liable to pay them up in cash. The statutory provisions requiring the making and filing of a contract do not enable the company to issue its shares at a discount for a consideration which has an obvious money value less than the face value of the shares;

nor can the company issue its shares for a wholly illusory consideration. But, subject to this, and in the absence of fraud, neither the court, while the company is a going concern, nor the liquidator, if the company is being wound up, will enquire into the adequacy of the consideration. The court will only do this in an action to set aside the contract.

The statutory requirements as to contracts and the filing of the same are as follows:—

Dominion.

Manitoba.

New Brunswick.

No requirements.

Nova Scotia (s. 82).

Shares will be deemed to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless otherwise determined by a contract duly made in writing and filed with the Registrar at or before the issue of the shares. The company or any person interested in the shares may apply to the court for relief against the effect of failure to file any contract or a sufficient contract.

Alberta (s. 110 (b)).

A contract in writing stating the title of the allottee to the allotment, together with any contract of sale or for services or other consideration in respect of which the allotment was made, must be filed with the Registrar along with the return of allotments (see p. 103), within one month of the allotment; otherwise the shares will be deemed to have been issued and to be held subject to the payment of the whole amount thereof in cash. The company or any

person interested in the shares may apply to the court for relief against the effect of failure to file any contract or a sufficient contract.

Ontario (s. 116 (1)).

Saskatchewan (s. 96).

British Columbia (s. 125).

In Ontario, a company which files a prospectus, in Saskatchewan and British Columbia every company, must file an original of the contract of sale upon filing the return of allotments (pp. 103, 104). Failure to file the contract makes directors and officers responsible, liable to a penalty, but does not leave the shares subject to payment in cash. In British Columbia, where the contract has not been reduced to writing, the prescribed particulars of the contract must be filed.

In Saskatchewan and British Columbia the company or any person liable for default may apply to the court for relief.

Quebec (art. 5986).

Subscriptions for stock must be paid in cash, unless payment therefor in some other manner has been agreed upon by a contract filed with the Provincial Secretary at or before the issue of such shares or within thirty days thereof.

Issue of shares at a discount.

It has been seen above (p. 102), that as a general rule shares may not be issued at a discount, *i.e.*, a company may not accept payment of say fifty dollars in full of a share of one hundred dollars par value. In some jurisdictions, however, the issue of shares at a discount is permitted subject to the observance of

statutory requirements. If these are not observed, the subscriber will generally be liable to pay up the difference between the issue price and the par value, so that any person who takes such shares at a discount from the company should satisfy himself that the statute permits the discount and that the proper steps have been taken, and if his subscription is for a considerable amount, he should take the opinion of a competent solicitor, not necessarily the solicitor for the company. In some jurisdictions a distinction is made between mining companies and other companies, and it will be convenient to consider both classes of companies separately.

Special statutory provisions.

(a) Any company.

New Brunswick (ss. 44, 52).

Shares may be issued at a discount if a by-law is confirmed at an annual meeting or general meeting duly called for the purpose.

Manitoba (ss. 32 (4), 44A, 45).

The company may dispose of its shares at such discount as the directors think advantageous to the company, but only after having received the sanction of two-thirds in value of the shareholders at a special or general meeting. A by-law must be passed and twenty days' notice given to each shareholder of the by-law proposed to be submitted at the meeting. The by-law does not come into effect until a certified copy has been filed with the Provincial Secretary and notice thereof given in the *Manitoba Gazette*. The payment of a commission on the sale of shares does not constitute a sale at a discount (see *Commissions*, p. 72, above).

(b) **Mining companies (no personal liability).**
Ontario (Part XI., ss. 146-152).

A mining company may issue its shares at a discount. The petition for incorporation must state that the company is to be made subject to part XI. of the Act. No shareholder of such a company is personally liable for non-payment of any calls beyond the amount agreed to be paid on his shares, provided that they have been issued at a discount in accordance with the Act. No shares may be issued at a discount unless authorized by a by-law of the company fixing and declaring the rate and any other terms and conditions of the issue, confirmed at a general meeting of the shareholders duly called for considering the by-law (s. 148). For the form of by-law, see Forms, p. 240. A copy of the by-law must be transmitted by registered post to the Provincial Secretary within twenty-four hours after confirmation, *or* actually filed in his office within five days after confirmation. Such copy must be verified as a true copy by the joint affidavit of the president and secretary. If there are no such officers, or if one or both be unable at the proper time to make the affidavit, the affidavit of the president or secretary and of one of the directors or of two of the directors, as the case may require, will suffice. If the president or secretary does not make or join in the affidavit the reason for his failure to do so must be stated in the affidavit that is filed (s. 149). Every such company must comply with the requirements of s. 150, which is as follows:—

150. Every such company shall have written or printed, immediately after or under its name, wherever such name is used by the company or by any director, officer, servant or employee thereof, and shall have engraved upon its seal the words "No Personal Liability"; and upon every share certificate issued by

the company, distinctly written or printed in red ink, where such share certificates are issued in respect of shares subject to call, the words "Subject to Call"; or, if in respect to shares not subject to call, the words "Not Subject to Call," according to the fact. 2 Geo. V. c. 31, s. 148.

A special procedure by way of sale of shares in the event of non-payment of calls is provided by s. 151. Whether the remedy of forfeiture of shares for non-payment of calls available in the case of other companies (s. 62) is available in the case of a mining company governed by Part XI. is not free from doubt. In the absence of decisions to the contrary it is submitted that it is. Discretion should be observed in exercising the special remedy of sale. If a large block of shares were put up for sale and realized a low price, the market for the company's shares might be destroyed. Section 151 reads as follows:—

151.—(1) In the event of any call on shares of such a company remaining unpaid by the holder thereof for a period of sixty days after notice and demand of payment, such shares may be declared to be in default, and the secretary of the company may advertise such shares for sale at public auction to the highest bidder for cash by giving notice of such sale in a newspaper published at the place where the principal office of the company is situate, or if no newspaper is published there, then in a newspaper published at the nearest place to such office, once a week for four successive weeks.

(2) The notice shall contain the numbers of the share certificates in respect of such shares and the number of shares, the amount of the call or calls due and unpaid and the time and place of sale.

(3) In addition to the publication of the notice, it shall be personally served upon such shareholder or sent to him by registered post addressed to him at his last known place of abode.

(4) If the holder of such shares fails to pay the amount due thereon, with interest and the cost of advertising, before the time fixed for such sale, the secretary shall proceed to sell the same, or such portion thereof as shall suffice to pay such calls together with interest and the cost of advertising and of the sale.

(5) If the price of the shares so sold exceeds the amount due with interest and costs, the excess shall be paid to the defaulting shareholder on demand. 2 Geo. V. c. 31, s. 149.

(6) In lieu of proceeding to sell under the preceding subsections, the company may maintain an action for the sale of the shares in the Supreme Court, and process in such action may be served upon a shareholder resident out of the jurisdiction in the same manner and subject to the same condition as process is permitted to be served out of the jurisdiction in cases provided for by the Consolidated Rules.

(7) When there is any question raised as to the validity of a call or as to the right to sell, an action may be brought in the Supreme Court for the purpose of determining the validity of the call and the right to sell, and process in such action may be served on a shareholder resident out of the jurisdiction as provided in sub-section 6. 8 Geo. V. c. 20, s. 30.

If a company acts in contravention of Part XI., the company and every director, manager or officer incur a penalty; but a director, manager or officer may escape liability if he proves that he was not a party or privy to the act, and that when he became aware of it he forthwith gave notice thereof to the Provincial Secretary (s. 152).

Quebec (Mining Companies Act, s. 3, arts. 6743-6750).

A mining company may issue its shares at a discount. The application for incorporation must ask and the letters patent must state that the shareholders incur no personal responsibility in excess of the amount of the price paid or agreed to be paid to the company for its shares (art. 6748). No shares may be issued at a discount unless authorized by by-law of the company fixing the discount or rate and all terms and conditions of the issue, and unless such by-law is ratified at a meeting of shareholders called by notice specifying the terms of the proposed issue. A duly certified copy of the by-law must be sent by registered letter to the Provincial Secretary within

two days of its having been passed (art. 6748). Directors, officers or agents are subject to a heavy penalty if shares are issued under par in contravention of the above provisions (art. 6750).

Share certificates must bear under or after the name of the company, the words, in red ink, "*Incorporated under the Quebec Mining Companies' Act,*" and also the words "*Subject to call*" if the certificate refer to a share subject to call, or the words "*Not subject to call,*" if it refer to a share not subject to call (art. 6748, sub-sec. 3); and also if the shares are issued under par, the words "*Issued by the company at (mentioning the rate) discount*" (art. 6749).

The words "*No personal liability*" must appear after or under the name of the company on the following:—the charter, corporate seal, prospectus, stock certificates, bonds, contracts, agreements, notices, advertisements, and other official publications, bills of exchange, promissory notes, endorsements, cheques, orders for money or goods, signed for or by the company, and all invoices and receipts.

A special procedure for confiscation and sale of shares for failure to pay calls is provided by art. 6748 (6) and (7), which reads as follows:—

6. If a call remains unpaid for sixty days after notice or demand of payment, the directors may declare the shares upon which the call is not paid to be confiscated; and, after such confiscation, the secretary may sell the same at auction;

7. Such sale shall be announced by a notice sent to the shareholder in default to his last known address, and inserted twice in a newspaper published where the company has its head office, or in the neighboring district if there be none in such district.

Such notice shall state the number of shares to be sold, the number of the stock certificates in respect thereof, the name of the shareholder in default, the amount of the calls due and unpaid, and the day, hour and place of the sale.

The sale cannot take place before thirty days after the date of the first publication.

If the proceeds of the sale exceed the amount due with interest and cost of advertising, the excess must be paid over to the shareholder in default.

Manitoba (Mining Companies Act, R. S. M. c. 129).

The Manitoba Mining Companies Act contains the following provisions:—

2. Any company incorporated by letters patent under The Companies Act or any Act which it replaced, for mining purposes, may, from time to time, dispose of shares and stock at such times, to such persons, and on such terms and conditions, and at such premium or discount, or in such manner, as the directors think advantageous to the company:

Provided, however, that no by-law for the reduction or sale of stock at any greater discount, or at any less premium, than what has been previously authorized at a general meeting of the shareholders shall be valid or acted upon, until the same has been confirmed at a general meeting. R. S. M. c. 114, s. 2.

3. Where application is hereafter made to the Lieutenant-Governor-in-Council for the incorporation, by letters patent under this Act, of any company for mining purposes, such letters patent may, if the petition of the applicants so requires, contain a provision that no liability beyond the amount actually paid upon stock in such company by the subscribers thereto or holders thereof shall attach to such subscriber or holder. R. S. M. c. 114, s. 3.

4. Where the letters patent incorporating any such company contain the provision mentioned in the last preceding section, every certificate of stock issued by the company shall bear upon the face thereof, distinctly written or printed in red ink, after the name of the company, the words "Issued under section 3 of 'The Mining Companies Act,' and non-assessable." Where such stock is issued subject to further assessment, the word "Assessable," or if not subject to further assessments the word "Non-assessable," shall be used on such certificate, as the case may be. R. S. M. c. 114, s. 4.

5. Every mining company, the charter of which contains the said provision, shall have written or printed on its charter, prospectuses, stock certificates, bonds, contracts, agreements, notices, advertisements and other official publications, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices and receipts of the company, immediately after or under the name of such company, and shall have engraved upon its seal the words "Non-Personal

Liability"; and every such company which refuses or knowingly neglects to comply with this section shall incur a penalty of twenty dollars for every day during which such words are not so kept written or printed; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty. R. S. R. c. 114, s. 5.

6. If any call or calls on stock in a company so incorporated remain unpaid by the subscriber thereto, or holder thereof, for a period of sixty days after notice and demand of payment, such stock may be declared to be in default, and the secretary of the company may advertise such stock for sale at public auction to the highest bidder for cash by giving notice of such sale in some newspaper published at the place where the principal office of the company is situated, or, in case no newspaper is published thereat, then in a newspaper published in the nearest place to said office, for a period of one month; and said notice shall contain the number of the certificate or certificates of such stock, the number of shares, the amount of the assessment due and unpaid and the time and place of sale; and in addition to the publication of the notice aforesaid, notice shall be personally served upon such stockholder by registered letter mailed to his last known address; and if the subscriber or holder of such stock shall fail to pay the amount due upon such stock, with interest upon the same and costs of advertising, before the time fixed for such sale, the secretary shall proceed to sell the same or such portion thereof as shall suffice to pay such assessment, together with interest and cost of advertising:

Provided that, if the price of the stock so sold exceed the amount due with interest and costs thereon, the excess thereof shall be paid to the defaulting stockholder. R. S. M. c. 114, s. 6.

7. No shareholder or subscriber for stock in any company so incorporated shall be personally liable for non-payment of any calls made upon his stock, beyond the forfeiture and sale, in the event of non-payment of such calls of the amount, if any, already paid on the stock held or subscribed for, nor shall such shareholder or subscriber be personally liable for any debt contracted by the company or for any sum payable by the company, beyond the amount, if any, unpaid by him upon such stock. R. S. M. c. 114, s. 7.

APPLICATION OF THE COMPANIES ACT.

8. Notwithstanding anything contained in The Companies Act, the original capital stock of any mining company may be five millions of dollars or less, but shall not exceed that amount except as provided in section 38 of the said Act. R. S. M. c. 114, s. 8; 7-8 Ed. 7, c. 29, s. 1.

9. Section 20 of The Companies Act shall not apply to mining companies. R. S. M. c. 114, s. 9.

10. Notwithstanding anything contained in this Act the provisions of section 35 of The Companies Act shall apply to any company incorporated under this Act, and to the directors, laborers, servants and apprentices thereof. R. S. M. c. 114, s. 10.

Mining Companies with specially limited liability.

Saskatchewan (s. 70).

The Saskatchewan Act provides that the memorandum of association of a company whose objects are restricted to mining, may contain a provision limiting the liability of a subscriber or holder of shares to the amount he has actually paid. Section 70, which governs such companies, reads as follows:—

70. The memorandum of a company, the objects of which are restricted to acquiring, managing, developing, working and selling mines, mineral claims and mining properties, and the winning, getting, treating, refining and marketing of minerals therefrom, may contain a provision that no liability beyond the amount actually paid upon shares and stocks in such company by the subscribers thereto or holders thereof shall attach to such subscriber or holder.

(2) The certificate of incorporation issued by any company incorporated under this section shall contain the words "Specially limited as a mining company under section 70 of The Companies Act."

(3) Every certificate of shares or stock issued by a company incorporated under this section shall bear upon its face distinctly written or printed in red after the name of the company, the words, "Issued under the provisions of section 70 (respecting mining companies) of The Companies Act."

(4) Where such shares or stock are issued subject to further assessment, they shall, in addition, bear the word "Assessable," and if not subject to further assessment, the word "Non-assessable."

(5) Every company incorporated under this section shall bear in legible characters on its prospectuses, certificates, bonds, contracts, agreements, notices, advertisements and all other official publications, and on all bills of exchange, promissory notes, indorsements, cheques and orders of any kind purporting to be signed by or on behalf of the company and on all bills of parcels,

invoices, receipts and letter heads of the company immediately after or under its name and shall have engraved upon its seal the words "Non-personal Liability."

(6) Every such company which refuses or knowingly neglects to comply with the provisions of this section shall be liable to a penalty of \$25 for every day during which the default continues, and every director, manager or officer of the company who knowingly and wilfully authorizes or permits such default shall, upon summary conviction, be liable to the like penalty.

(7) In the event of any call or calls on assessable shares in a company incorporated under this section remaining unpaid by the subscriber thereto or holder thereof for a period of sixty days after the notice and demand for payment, such shares may be declared in default and, after advertisement published in some newspaper circulating in the district in which the operations are carried on, or the head office of the company is situated, for a period of one month and containing the following particulars:

- (a) The number of the certificate or certificates of such shares;
- (b) The number of shares to be sold;
- (c) The amount of the assessment due and unpaid; and
- (d) The time and place of sale;

such shares, or such proportion thereof as shall suffice to pay such assessment, together with all proper costs and interest, may be sold at public auction to the highest bidder for cash:

Provided that due notice shall be served upon the subscriber or holder of such shares by registered letter to his last known address of the action proposed to be taken by the company, and should he pay the full assessment and costs such sale shall not be held;

Provided further that if the price of the shares so sold exceeds the amount due with interest and costs thereon, the excess shall be paid to the defaulting subscriber or holder.

(8) No subscriber or shareholder for shares in any company so incorporated shall be personally liable for non-payment of any calls upon his shares beyond the forfeiture and sale in the event of the non-payment of such calls of the amount, if any, already paid on the shares held or subscribed for; nor shall such subscriber or shareholder be personally liable for any debt contracted by the company or for any sum payable by the company beyond the amount paid by him upon such shares.

Alberta (ss. 63-68).

The Alberta Act contains provisions similar to, but more elaborate than, those contained in the

Saskatchewan Act, the Alberta sections being worded so as to expressly include oil and natural gas companies.

British Columbia (ss. 2, 21, 136-140).

The Act provides for the incorporation of specially limited mining companies. The memorandum of association must be in accordance with Form 3 in the Second Schedule to the Act, and must state, inter alia, the name of the company, with "Limited (Non-Personal Liability)" as the last words in its name; that the objects of the company are restricted to mining, adopting the wording of s. 21 (c); that the liability of the members is limited, and no personal liability shall attach to any member. Provisions relating to specially limited companies appear in Part VII. of the Act. The more important of these provisions are as follows:—

136. No member of a specially limited company shall be personally liable for the amount (if any) unpaid on his shares or for any debt contracted or payable by the company. R. S. 1911, c. 39, s. 135; 1920, c. 14, s. 9.

137.—(1) Notwithstanding anything in the articles contained, no share in a specially limited company shall be forfeited for failure to pay a call on the day appointed for payment thereof, until the directors have served a notice on the shareholder naming a further day (not earlier than the expiration of sixty days from the date of the notice) for payment of the call, and stating that in the event of non-payment on or before that day the share in respect of which the call was made will be liable to be forfeited.

(2) Subject to this section, the regulations in Table A in the First Schedule relating to the forfeiture of shares for failure to pay a call shall be the regulations of a specially limited company whose articles contain no such regulations. R. S. 1911, c. 39, s. 134; 1920, c. 14, s. 9.

138.—(1) Every certificate of shares issued by a specially limited company shall bear upon the face thereof, in conspicuous type, after the name of the company, the words "Issued under Part VII. of the 'Companies Act, 1921,' respecting specially

limited mining companies," and where any such share is not fully paid the word "assessable," or if fully paid the word "non-assessable," as the case may be.

(2) Every company which makes default in complying with the requirements of this section shall be guilty of an offence against this Act. R. S. 1911, c. 39, s. 132; 1920, c. 14, s. 9.

139.—(1) Notwithstanding the provisions of section 108, a specially limited company may pay or allow a discount to any person in consideration of his subscribing or agreeing to subscribe for any share of the company, if the payment or allowance of the discount is authorized by the memorandum or articles, and the discount paid or allowed does not exceed the amount so authorized, and, in the case of shares offered to the public for subscription, the amount so authorized is disclosed in the prospectus. . . .

Calls.

Shares are sometimes paid for in full before or upon allotment; sometimes the application provides for payment by specified instalments; or a certain amount is paid upon application, a certain amount upon allotment and the balance remains unpaid subject to being called up by the directors. In the absence of contract, the shareholder is not bound to pay anything until the directors call upon him to pay. The directors, in making calls, must observe the provisions and restrictions (if any) of the governing Act, charter and by-laws or articles. In the absence of special restrictions they may call up the whole amount unpaid at one time, but it is usual to do so by instalments. Where shares have been subscribed for on the terms of a prospectus or an agreement under which they are to be payable by fixed instalments, the directors cannot increase such instalments, or, by means of calls, make the subscriber anticipate the dates of payments. Where a call is made upon all shareholders without discrimination or partiality, the court will not interfere to determine whether the call was necessary

or not. The directors must not favor themselves or any group of shareholders. In making calls, the rule is that the assessment should fall equally on all. The directors cannot agree that a shareholder shall not be liable for calls; nor, after a call has been made, can they release a shareholder from his liability to pay it.

The by-laws or articles commonly provide that the directors may from time to time make such calls as they think fit on the shareholders in respect of all moneys unpaid on the shares held by the shareholders respectively and not by the conditions of allotment made payable at fixed times; that each shareholder shall pay the amount of every call to the persons and at the times and places appointed by the directors; that a call may be made payable by instalments; that it shall be deemed to have been made when the directors' resolution authorizing it was passed; that a specified notice (usually fourteen days) of any call shall be given specifying the time and place of payment and the person to whom payment is to be made; that interest at the rate specified shall be payable on overdue calls.

A call must be made by a quorum of directors, duly qualified, duly elected and at a meeting regularly convened. If the meeting is irregularly held or there are other irregularities, the call will be invalid, but a defective call can be subsequently confirmed at a regular meeting. The by-laws or articles frequently provide that the acts of defectively appointed or disqualified directors shall be valid.

For a form of resolution making a call, see App. Form 17.

A proper notice must be served on each shareholder, bringing to his attention the fact that a call

has been made, and requiring him to pay the amount due in respect of his shares. In some jurisdictions, e.g., Ontario, the notice must state that in default of payment the shares are liable to forfeiture.

The terms of the notice and the mode of its service (usually by mailing), must be in accordance with the by-laws or articles and the resolution making the call. For form of notice, see App. Form 18. Evidence should be kept that the notice was duly mailed. If a call is not paid on the due date it carries interest at the rate (if any) specified in the governing Act or the by-laws or articles.

The Dominion, Quebec and New Brunswick Acts authorize the directors to receive payment in advance of calls. In Nova Scotia, Saskatchewan, Alberta and British Columbia, the articles of the company may contain similar provisions. In Ontario and Manitoba there is no provision for pre-payment.

Provisions relating to calls appear in the statutes of the following jurisdictions as indicated:—Dominion (ss. 58-63); Ontario (s. 62); Quebec (arts. 5998-6002); Manitoba (ss. 53-58); New Brunswick (ss. 64-68); Nova Scotia (ss. 39, 40, 53, 59, 118); Saskatchewan (ss. 51, 65, 130); Alberta (ss. 69, 136); and British Columbia (s. 79).

Enforcement of calls.

1. *Forfeiture.*

If a call is not paid on the day appointed, the directors are usually entitled, after serving a further demand or notice on the delinquent shareholder requiring the call to be paid by a certain date, to declare the shares forfeited. The power to forfeit shares must be exercised for the benefit of the company, not, e.g., for the benefit of a shareholder by

relieving him of his shares if these are worth nothing. In the latter case, the directors should sue the shareholder for the calls; for it is the duty of the directors to compel the shareholder to pay, and they must bona fide believe that they cannot obtain payment from the shareholder before they are justified in forfeiting the shares. The right of forfeiture must be exercised with the utmost exactness, and in accordance with the provisions of the governing Act, by-laws or articles; otherwise the forfeiture may be invalid and the shareholder entitled to relief. For form of notice of intended forfeiture and form of resolution forfeiting shares, see App. Forms 19 and 20. Shares cannot be forfeited for non-payment of fixed instalments under a subscription, unless such instalments are assimilated to calls by the governing Act or the company's regulations; for such fixed instalments are not calls. The effect of a valid forfeiture is that the person whose shares are forfeited ceases to be a shareholder, and unless the governing Act or the company's regulations otherwise provide, he ceases to be liable for past or future calls. In the case of companies incorporated by memorandum and articles, it is commonly provided that the former shareholder remains liable for all calls due at the time of forfeiture. Some Acts provide that the former shareholder remains liable to the company's creditors for the full amount unpaid on his shares at the time of forfeiture, less any sums subsequently received by the company (Dominion, Quebec and New Brunswick). The shareholder is, however, relieved of his liability to the company. Under the Ontario Act, forfeiture 'shall not relieve the shareholder of any liability to the company or to any creditor' (s. 62).

The by-laws or articles frequently provide that the directors may rescind a forfeiture upon certain terms, but this cannot be done unless the shareholder consents.

The provisions relating to forfeiture appear in the following jurisdictions as indicated: Dominion (s. 62); Ontario (s. 62); Quebec (art. 6001); Manitoba (s. 56); New Brunswick (s. 68). The Acts of Nova Scotia, Saskatchewan, Alberta and British Columbia leave forfeiture to be dealt with in the articles.

2. *Action for amount of call.*

Where the company's shares are unsaleable or are worth less than what has been already paid on them, it will be more advantageous to bring an action against the shareholder to enforce payment of the calls than to forfeit the shares. In some jurisdictions there is a statutory right of action for calls; in others, calls are, in effect, made statutory debts, and recoverable by action, which amounts to the same thing. In most jurisdictions recovery of calls by action is expressly made an *alternative* to the remedy of forfeiture.

3. *Sale of shares (mining companies).*

The special remedy in some jurisdictions by way of sale of shares for non-payment of calls exists only in the case of mining companies, which have been considered above, at pp. 113 ff.

Purchase by company of its own shares.

A company, unless expressly authorized by Statute, can not purchase its own shares. The principle is that the company's capital is a fund to be used for the carrying on of the company's business, and the payment of creditors; and the purchase of its own

shares by the company obviously involves a mis-application and reduction of that fund. Subject to special regulations and restrictions for the protection of creditors, the different Acts provide that a company may reduce its capital in various ways, which may include the repayment of paid-up share capital in excess of its needs. See "reduction of capital" below, at p. 240. But short of following such procedure a company cannot directly or indirectly (e.g., by carrying on the purchase through a trustee for the company) buy its own shares, or use its moneys for that purpose. Nor will a company be bound by a contract to re-purchase its own shares. This is a point which is sometimes overlooked or concealed by over-zealous stock-salesmen in giving such an undertaking on behalf of the company in order to persuade unwilling purchasers.

The above is subject to the statutory provisions in some jurisdictions for the issue of preference shares subject to redemption or re-purchase by the company (see p. 90, above); and to the provisions in some jurisdictions authorizing the purchase of fractions of shares as incident to the consolidation of shares of small par value into shares of larger amount.

Surrender of shares.

The objections to and the rule against permitting a company to re-purchase its own shares apply with equal force to the surrender of shares and the cancellation of an allotment already made. Where, however, a power to forfeit shares has become exercisable, a surrender may be taken as a short cut to forfeiture; and also where there is a bona fide dispute between the shareholder and the company as

to whether the shares have been legally issued, shares may be taken back by way of compromise, but not where the shareholder admits that he is a shareholder. Legal advice should be taken where it is proposed to accept a surrender of shares.

The company's money may not be used to get rid of a shareholder who is objectionable, or one who desires to retire; but there is nothing to prevent another shareholder, whether he is a director or not, from using his own money to buy the shares and by having them transferred to himself or some third person, thereby accomplishing the same result.

After shares have been allotted and notice of allotment given, the subscription and allotment cannot be cancelled, unless there is a bona fide dispute whether the allottee has become a shareholder or not.

CHAPTER VIII.

TRANSFER OF SHARES.

A shareholder is entitled to transfer his shares to anyone else, on complying with the regulations of the governing Act, by-laws or articles. Shares may be transferred in the manner prescribed in the by-laws or articles of the company, which always require a transfer to be in writing signed by the transferor and sometimes also by the transferee. It is also invariably provided by statute or the company's regulations that registration of the transfer and entry of the name of the transferee in the register of shareholders in place of the transferor is requisite. Until this is done the transferor remains liable as a shareholder for any amount unpaid on his shares. Frequently certificates are endorsed in blank by the holder, and pass through several hands until the last holder fills in his name (which he has implied authority to do), and presents the certificate to the company or to the registrar and transfer agent for registration in his own name. The person who is purchasing or lending money on the security of shares should not pay over his money till he is assured that there will be no objection to the transfer being registered. Often the governing Act, or the company's by-laws or articles, enable the directors to refuse to permit a transfer by a shareholder indebted to the company, or give the company a lien on, and right of sale over, shares of a shareholder indebted to the company; or restrict the transfer of

shares with calls unpaid or not fully paid, even where no calls are in arrear; or provide that no transfer shall be made to a person of whom the directors do not approve. If the shares are those of a "private company," there is always a restriction on transfers (see p. 76). There may also be a court order in existence enjoining the transfer of specific shares. Upon an ordinary sale of shares the transferor is not impliedly bound to procure registration of the transfer; he need only hand the transferee the certificate and the transfer; but he must not prevent or delay registration of the transfer. Specific performance of an agreement to sell shares may be granted.

The form of transfer is usually printed on the back of the certificate (App. Form 21), but transfer by a separate document in a special form or in the "usual common form" (App. Form 22), may be prescribed. Where a given form is prescribed by the by-laws or articles it should be followed, and the directors should refuse to register a transfer unless it substantially complies with the regulations. If it does, they must permit registration. (See Company Law, p. 333) .

Restrictions on transfers.

The directors are usually entitled to refuse to permit the transfer of unpaid shares, shares with calls unpaid thereon, or shares of a shareholder indebted to the company. Their authority in this regard is conferred by the Act and by-laws (letters patent companies), or by the articles (memorandum companies). In the case of companies of the latter class, the articles may contain further restrictions,

but in the case of companies incorporated by letters patent the by-laws must not attempt to restrain the transfer of fully paid shares, except where the transferor is indebted to the company, and the company is permitted to refuse to allow a transfer in such case. Under the Dominion and Ontario Acts, where it is desired to restrict the transfer of fully paid shares, the company should be incorporated as a "private company." In New Brunswick the transfer of shares may be restricted by by-law unanimously confirmed by the shareholders ("close corporation"; see p. 81).

Loans on security of shares.

It is a common commercial practice to make loans on the security of shares. If the shares are fully paid the lender should take a transfer to himself or a trustee, register the transfer and obtain a new certificate from the company prior to making the advance. This alone will give the lender absolute security. Another method is for the borrower to deposit the share certificates with the lender endorsed in blank, the lender retaining the certificates until the loan is repaid. As the lender does not acquire a complete title to the shares until registration, he runs the risk of having his security defeated. For the company may register a subsequent transfer without requiring production of the certificate, or the company may have a lien on the shares for the indebtedness of the shareholder. Furthermore, until registration of the transfer to the lender, the borrower will receive dividends and be entitled to vote on the shares.

If the shares are not fully paid up the lender should take a charge on the shares and notify the

company, or have the shares pledged to him endorsed in blank. It is almost unnecessary to say that, as a general rule, shares which are not fully paid or shares on which no dividends are being paid are a very undesirable security.

If the borrower fails to repay the loan at the appointed time, the lender should take legal advice for the purpose of enforcing his security. Even in the absence of express agreement, the lender may be entitled to foreclose or sell the shares.

Transfer practice.

Most large companies employ another company (usually a trust company) as registrar and transfer agent to record transfers of shares and issue share certificates. The following are some of the points which commonly arise to be dealt with by the secretary, where there is no registrar and transfer agent, or the transfer officer where there is a registrar and transfer agent.

(1) Genuineness of signature.

The company is bound not to take an existing shareholder off the register unless he has executed a transfer. If it acts on a forged transfer, it is liable to the shareholder in damages, or may have to go into the market and buy other shares to replace those improperly transferred. The company may, as a precaution, advise the registered holder of the transfer, but the protection derived from this practice is apt to be illusory, except in jurisdictions where it is expressly provided for (Ontario, s. 61). It is a more useful precaution to require the person presenting the transfer to procure the endorsement to be guaranteed by a bank or by a firm of stockbrokers on a recognized stock exchange.

(2) *Regularity of endorsement.*

The signature should correspond exactly with the name on the face of the certificate. Most forms of endorsement printed on the back of the certificate call for the witnessing of the signature of the transferor, but the absence of a subscribing witness is not fatal.

(3) *Change of name.*

In the case of the marriage of a female shareholder and consequent change of name, a statutory declaration should be required setting out the facts and showing that the names on the face of the certificate and in the endorsement are those of the same person.

As shares are personal estate and are governed by the law of the shareholder's domicile, it is important to obtain the concurrence of the husband in the transfer of shares by a female married shareholder domiciled in a jurisdiction, e.g., the Province of Quebec, where such concurrence may be requisite, or, where the domicile of the shareholder is in doubt, to obtain a declaration covering the matter.

(4) *Transfers by executors and administrators.*

Production of the original probate or letters of administration, or a duly certified copy, should be required, but the company need not examine the will to ascertain whether it confers authority to transfer the shares. By production of the probate the company acquires notice only of the names and addresses of the executors and is not entitled to assume that a transfer by the executors involves a breach of trust.

If there is more than one executor or administrator, all should concur in the transfer.

In the case of transfers by foreign executors or administrators, the taking out of ancillary letters probate or ancillary administration, or the re-sealing of the probate or letters of administration in the province where the head office of the company is situated must be exacted. It is furthermore necessary in such cases for the company to require proof of compliance with the provisions of the Succession Duty Act of the province in which the register of the company is situated. In most provinces such Acts forbid the registration of transfers by foreign executors unless succession duty has been paid or a bond given to secure payment thereof. If no succession duty is payable, the executors or administrators should furnish the company with a letter from the Provincial Treasurer to that effect.

(5) *Transfers to and by partnership firms.*

In the case of a transfer to a partnership firm, strictly, the new certificate should be made out in the name of the individual partners and not in the name of the firm; but the existing practice is to register the firm as shareholder. However, any transfer by the partnership ought to be signed by each individual partner in his own name, unless the business of the partnership is to deal in shares.

(6) *Custody of certificates after transfer.*

A certificate, after transfer, should be cancelled and attached to its counterfoil in the certificate book. If all the shares comprised in the certificate are not transferred, a fresh certificate for the balance is issued to the transferor.

(7) *Transfers executed under power of attorney.*

Where the transfer is not signed by the shareholder himself, but by some one as attorney for him,

the original power of attorney must be produced to and retained by the company or the transfer agent.

(8) *Loss, destruction or defacement of certificate.*

See p. 106, above.

Tax on transfers of shares and securities.

(a) *All companies.*

The Dominion Special War Revenue Act, 1915, as amended in 1920, c. 71, and again in 1922, imposes a stamp tax on sales or transfers of shares and bonds of *any* company. The provision reads as follows:—

(13) (a) No person shall sell or transfer the stock or shares of any association, company or corporation, or any bond other than a bond of the Dominion of Canada or of any province of Canada, by agreement for sale, entry on the books of the association, company or corporation, by delivery of share certificates or share warrants or bond endorsed in blank or bond payable to bearer, or in any other manner whatsoever, or accept the transfer or delivery of any stock or share or bond unless in respect of such sale or transfer there is affixed to or impressed upon the document evidencing the ownership of such stock or shares or bond, or a document showing the transfer or agreement for the transfer thereof, an adhesive stamp, or a stamp impressed thereon by means of a die of the value of three cents for every one hundred dollars or fraction thereof of the par value of the stock or shares or bond sold or transferred. Provided that in case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed or impressed upon such books; and where the change of ownership is by transfer of the certificate or bond the stamp shall be placed or impressed upon the certificate or bond; and in case of an agreement to sell or where the transfer is by delivery of the certificate or bond assigned in blank, or bond payable to bearer, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed or impressed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Provided that the first delivery by a corporation or company of such shares, or debenture stock, in order to effect an issue, or the first issue of a bond or a sale or transfer of any bond between any recognized dealers or brokers, shall not be subject to the tax imposed by this subsection. The Governor-in-Council may make

regulations for the purpose of determining what constitutes a sale or transfer under this subsection.

(b) Any person who violates any of the provisions of this subsection shall be liable to a penalty not exceeding five hundred dollars.

The department administering the above Act is the Department of Customs and Inland Revenue.

It should be noted that the tax is imposed on transfers of share warrants, share certificates and bonds; and on the transfer by delivery of certificates endorsed in blank, notwithstanding that the transfer may never be registered in the books of the company. Where a person buys or sells through a broker, delivery of the shares to the broker is delivery to an agent and does not constitute a sale or transfer. Where shares are assigned in blank and deposited with a banker or other person as collateral security for an advance made, or to be made, the transaction is not a sale or transfer within the meaning of the Act. In the event of default by the borrower, and sale by the lender, the sale constitutes only one taxable transaction.

“Stock” as used in the above section, in the opinion of the Department, includes debenture stock.

In cases where both transferor and transferee are resident outside of Canada, and the whole transaction takes place outside of Canada, the tax does not apply; but, if one of the parties resides in Canada, the document which he gives or receives evidencing the transfer or sale must be stamped. The fact that the company's share register is kept outside of Canada does not affect the foregoing (Ruling, Aug. 13th, 1920).

Where shares of no par value are transferred the tax is assessed on the value of the shares at the time of sale (Ruling, Dec. 21st, 1920).

The stamps are obtainable from the local Dominion Inland Revenue Office.

The recognized stock exchanges have an arrangement with the Department whereby the amount of the tax on the transactions which have taken place in the particular exchange is paid at the end of each week.

(b) Ontario.

The Corporations Tax Act, R. S. O. 1914, c. 27, s. 12, as amended, provides in part as follows:—

12. There shall be levied a tax of three cents, payable by the transferor in money or stamps, for every \$100 or fraction thereof of the par value upon every change of ownership consequent upon the sale, transfer or assignment of shares, or debenture stock issued by any corporation or company made or carried into effect in Ontario; but the first delivery by the corporation or company of such shares, or debenture stock, in order to effect an issue, shall not be subject to the tax imposed by this section. 1 Geo. V. c. 5, s. 2, part; 1920, c. 9, s. 7.

Further provisions appear in ss. 12a and following. Section 15 declares in effect that the tax does not apply to transfers as security or transmissions on death. Corporations are required to make annual returns as to transfers. The form of return is annexed to the form of annual summary obtainable from the department of the Provincial Secretary.

It should be noted that transfers of debenture stock as well as shares are taxed.

Regulations regarding the transfer tax have been made by Orders-in-Council, 19th May and 16th June, 1911, copies of which can be obtained from the Department. The regulations provide, *inter alia*: that transfers shall be held to have been made bona fide for the security of loans, if at the time of making the same the transferor makes an affidavit to that effect; that corporations whose shares are dealt in on any recognized stock exchange may accept the

signed statement of any officer or member of a Stock Exchange, or any one of the member's firm, that the tax has been paid through the executive of the Exchange; that corporations may accept the signed statement of any member of the Exchange, or any firm to which such member belongs, or any bank or loaning institution, that any transaction is by way of security for a loan or is a loan of stock, whereupon the same shall be free from tax.

Where the share register is kept in Ontario, the tax is payable on all transfers, irrespective of the place of residence of the transferor and transferee, and irrespective of where the transfer takes place, on the ground that the transfer really takes place where the register is kept (Ruling, Oct. 19th, 1920).

If an Ontario company keeps its share register outside of Ontario, as it may if it takes the proper steps under the Act in that behalf (see p. 219), it is not the practice to pay transfer tax on transfers, where the transaction takes place wholly outside the Province (e.g., a sale on a foreign exchange, where transferor and transferee are both resident outside the jurisdiction). Stamps are obtainable from the Provincial Treasurer's Office, and in Toronto also from the Stamp Office, Osgoode Hall. The tax may be paid, if desired, in money remitted to the Provincial Treasurer. The Department has ruled that the transfer tax on shares of no par value is three cents per share.

Annual Return.

Companies must make an annual return to the Provincial Treasurer, Toronto, showing every sale, transfer, assignment of shares or debenture stock issued, made or carried into effect in Ontario, together with the amount of transfer tax collected (s. 12a (1)).

A company, however, whose shares or debenture stock are sold upon an incorporated stock exchange is permitted to make a return showing annually the total amount of all sales, transfers, assignments, and the total amount of the transfer tax collected (s. 12a (1) a).

A company which has appointed a Trust Company as transfer agent for its shares or debenture stock is permitted, instead of making a return of every sale, transfer, etc., to file a statement from its transfer agent to the effect that the tax on all transfers made during the preceding year has been accounted for in accordance with the provisions of the Act and regulations pertaining thereto (s. 12a (1) b).

The return and affidavit verifying the same is to form part of and be attached to the annual summary or return required under the Ontario Companies Act to be forwarded on or before the 1st February in each year.

(c) *Quebec.*

A tax is imposed on the transfer of shares, bonds, debentures or debenture stock. Articles 1360-1362 of R. S. Q. 1909, as amended, read as follows:—

1360. In order to provide for the exigencies of the public service, there shall be levied, in accordance with the rules hereinafter set forth, a tax upon every change of ownership consequent upon the sale, transfer or assignment of shares, bonds, debentures or debenture-stock issued by any corporation or company, made or carried into effect in this province; but the first delivery by the corporation or company, of such shares, bonds, debentures or debenture-stock, in order to effect an issue, is not subject to the tax imposed by this article. (6 Ed. VII. c. 12, s. 1; 1 Geq. V. c. 11, s. 1).

1361. Such tax shall be paid in money or in adhesive stamps, according to the laws of this province, and particularly in accord-

ance with the provisions of section twenty-third of this chapter respecting stamps (Articles 1443 to 1479), and with any order-in-council passed or to be passed respecting the same. (6 Ed. VII. c. 12, s. 2).

1362. The amount of money which shall be paid or of stamps which shall be affixed shall be two cents for every hundred dollars or fraction thereof of the par value of such shares, bonds, debentures or debenture-stock, sold, transferred or assigned. (6 Ed. VII. c. 12, s. 3).

In the case of shares which have no fixed par value, the amount of money which shall be paid or of stamps which shall be affixed shall be two cents for every such share, except when the market value of such share is more than one hundred dollars, in which case the amount shall be two cents for every hundred dollars or fraction thereof of such market value. (7 Geo. V. c. 19).

Further provisions appear in arts. 1363-1373.

Regulations have been issued and are obtainable from the Treasury Department, Revenue Branch, Quebec. Stamps may be obtained from the Deputy Collector of Provincial Revenue, Montreal. If desired, the tax may be paid in money.

Statutory provisions relating to transfer of shares.

The various Acts contain provisions relating to the transfer of shares. The important of these are summarized below.

Dominion (ss. 56; 64-68; 83).

Shares are personal estate, transferable in the manner prescribed by the Act, letters patent or by-laws. Except for the purpose of exhibiting the rights of the parties, and making transferor and transferee jointly and severally liable to the company and its creditors, a transfer is invalid until it is registered. Transfers made by sale under execution or judgment or order of a Court are excepted. A further exception is made in the case of shares of any company listed and dealt with on any recog-

nized stock exchange, by means of scrip, commonly in use, endorsed in blank and transferable by delivery. Such endorsement and delivery constitute a valid transfer, except for the purpose of voting at meetings. Shares which are not fully paid up cannot be transferred without the consent of the directors. If the directors permit a transfer of shares, which are not fully paid, to a person not apparently having sufficient means to pay them up, they incur liability. Shares with calls thereon in arrear are not to be transferable. The directors may decline to register any transfer of shares belonging to a shareholder who is indebted to the company. A transfer by a personal representative of a deceased shareholder is valid, even though he is not himself a shareholder.

Ontario (ss. 55-61, 121).

Shares are personal estate, transferable in the manner prescribed by the Act, letters patent or by-laws. Shares not fully paid up cannot be transferred without the consent of the directors. Where any such transfer is made, with the consent of the directors, to a person who is not apparently of sufficient means to pay up such shares, the directors incur liability. The directors may decline to register a transfer of shares belonging to a shareholder who is indebted to the company, if the letters patent or by-laws so provide. If shares with a call thereon unpaid are transferred, both the transferor and transferee are liable for the call. The directors may close the transfer books for two weeks immediately preceding the payment of a dividend. A transfer is not valid until it is registered, except for the purpose of exhibiting the rights of the parties, and, if

it is an absolute transfer, making transferor and transferee jointly and severally liable to the company and its creditors. Transfers made by sale under execution or under the order or judgment of a Court are excepted. In case of doubt, when a transfer is presented, the company may notify the owner of the shares. Thereupon, unless the owner takes steps to restrain the transfer, the company may enter the transfer without incurring liability to the owner for doing so. If the name of any person is, without sufficient cause, entered in or omitted from the books of the company, application may be made to the Court for the rectification of the books.

Quebec (arts. 5987; 6003-6008).

Shares are moveable property, transferable in the manner prescribed by the Act, letters patent or by-laws. A transfer is not valid until it is entered in the register of transfers, except for the purpose of exhibiting the rights of the parties, and of making transferor and transferee jointly and severally liable to the company and its creditors. Transfers made by sale under execution or judgment or order of a Court are excepted. A further exception is made in the case of shares of any company listed and dealt with on any recognized stock exchange, by means of scrip, commonly in use, endorsed in blank and transferable by delivery. Such endorsement and delivery constitute a valid transfer, except for the purpose of voting at meetings. Shares which are not fully paid up cannot be transferred without the consent of the directors. If the directors permit a transfer of shares, which are not fully paid up, to a person not apparently having sufficient means to pay them up, they incur liability. Shares with calls thereon in

arrear are not to be transferable. The directors may decline to register any transfer of shares belonging to a shareholder who is indebted to the company. A transfer by a representative of a deceased shareholder is valid, even though he is not himself a shareholder.

Manitoba (ss. 46, 57, 59-65).

Shares are personal estate, transferable in the manner prescribed by the Act, letters patent or by-laws. The directors may refuse to allow the entering of transfers of shares on which a call has been made, which has not been paid in. A transfer is not valid until it has been entered in the books of the company, except for the purpose of exhibiting the rights of the parties, and of making transferor and transferee jointly and severally liable (*ad interim*) to the company and its creditors. Transfers made by sale under execution are excepted.

New Brunswick (ss. 50, 70-75).

Shares are personal estate, transferable in the manner prescribed by the Act, letters patent or by-laws. A transfer is not valid until it is entered in the register of transfers, except for the purpose of exhibiting the rights of the parties, and of making transferor and transferee jointly and severally liable to the company and its creditors. Transfers made by sale under execution or decree, order or judgment of a Court are excepted. A further exception is made in the case of shares of any company listed and dealt with on any recognized stock exchange, by means of scrip, commonly in use, endorsed in blank and transferable by delivery. Such endorsement and delivery constitute a valid transfer,

except for the purpose of voting at meetings. No transfer of shares, whereof the whole amount, or, if issued at a discount pursuant to s. 52, any part of the issue price, has not been paid in, is to be made without the consent of the directors. Shares are not to be transferable until all previous calls thereon are fully paid. The directors may decline to register any transfer of shares belonging to a shareholder who is indebted to the company. The transfer book may be closed, pursuant to by-law, for five days previous to the declaration of any dividend. The transfer book may not be closed more than four times in any one year. A transfer by a personal representative of a deceased shareholder is valid, even though he is not himself a shareholder. The company may be made a "close corporation" by by-law passed by the directors and unanimously confirmed by the shareholders. Thereupon the transfer of shares to persons other than shareholders will be subject to restriction as provided in the by-law.

Nova Scotia (ss. 27, 31-37).

Saskatchewan (ss. 35, 38-41, 44-48).

Alberta (ss. 26, 28-30, 34, 38, 42).

British Columbia (ss. 66-71).

Shares are personal property and are transferable in the manner provided by the articles, where most of the provisions relating to the transfer of shares will be found. No notice of any trust must be entered on the register or be receivable by the registrar. In British Columbia, an executor, trustee, etc., may be entered as a member and described as representing, in such capacity, a named estate or person. A transfer of shares of a deceased member by his personal representative, who is not himself a mem-

ber, is to be as valid as though he had himself been a member. The company may, after notice by advertisement, close the register of members for periods not exceeding thirty days in each year. If the name of a person is, without sufficient cause, entered in or omitted from the register, or, if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member, the person aggrieved or the company or any member may apply to the Court for rectification of the register. The register is *prima facie* evidence of any matters authorized by the Act to be inserted therein.

In Saskatchewan and Alberta, a transfer to escape liability, made for a nominal or no consideration, or to a person in the menial or domestic service of the transferor, is deemed fraudulent and need not be recognized by the company or a liquidator.

CHAPTER IX.

DIRECTORS.

Number, election, vacancies, failure to elect.

Dominion (ss. 72-78).

Ontario (ss. 83-85, 88-90).

Quebec (arts. 6012-6014, 6016-6018).

Manitoba (ss. 24-33).

New Brunswick (ss. 82-88).

The affairs of the company must be carried on by a board of directors, consisting of not less than a stated minimum, and in some jurisdictions not more than a stated maximum. The first, or provisional, directors must be named as such in the letters patent, and act until they are replaced by others duly appointed in their stead. As to the powers of provisional directors, see Company Law, p. 437.

The number of the directors is determined by the by-laws, subject to the statutory limit above mentioned.

Under the Dominion and Quebec Acts, the number may be increased or decreased by by-law, which does not, however, take effect until (a) it has been confirmed by two-thirds in value of the shareholders present at a special general meeting, and (b) a certified copy has been filed with the Department, and (c) published in the Dominion or Provincial Gazette, as the case may be.

In Ontario the requirements are the same except that the by-law becomes effective upon confirmation.

In Manitoba the number of the board may be regulated from time to time.

In New Brunswick the number of the board may be increased or decreased by by-law, which is not, however, to be valid or to be acted upon unless it is approved by two-thirds in value of the shareholders at an annual meeting or a special general meeting. Upon such approval the by-law becomes effective, and may be acted upon forthwith, unless, prior to its being acted upon, a shareholder or the representative of a shareholder, files with the secretary of the meeting a protest against such by-law. If a protest is filed, the by-law is not to become effective or to be acted upon unless or until a copy certified under the seal of the company has been deposited in the office of the Provincial Secretary-Treasurer and approved by him.

The directors must be elected by the shareholders in general meeting. The meeting must be held in Canada, in the case of Dominion companies; within the incorporating province in the case of provincial companies. In Ontario and New Brunswick the meeting may be held outside the province if the letters patent so provide.

The by-laws generally provide that the directors hold office for one year, that the election take place at the annual meeting and that retiring directors may be re-elected. In the absence of such by-laws the regulations of the governing Act apply. Among such regulations is a provision that the election of directors must be by ballot. In Manitoba a director may nominate a person to act in his place for a limited period (s. 33). Such a nominee is called an "alternate director."

In New Brunswick there is a special provision (s. 87), whereby a specified minority of the share-

holders may, acting as a unit, elect one director. Vacancies occurring during the term of office may be filled by the remaining directors from among the qualified shareholders. If the election of directors does not take place at the proper time, i.e., the annual meeting, the retiring directors continue in office till their successors are elected. Such election may take place at a subsequent meeting of the shareholders.

Nova Scotia.

Saskatchewan.

Alberta.

British Columbia.

Most of the provisions relating to directors will be found in the articles. The articles, or, if there are none, then the statutory articles contained in Table "A" will provide for the management of the company's affairs by a board of directors. The articles will usually name the first directors, in which event, in some jurisdictions, there is a statutory requirement that the persons so named must file a written consent to act and sign the memorandum of association for their qualification shares, or file a written contract to take them. See p. 18, above. Sometimes the articles authorize the subscribers to the memorandum to appoint the first directors. The number of the board is generally fixed by the articles, but is sometimes left to be determined in writing by a majority of the subscribers to the memorandum. A common provision in articles is that the board shall consist of not less than a stated number and not more than a stated number; that all or a stated proportion of the directors shall retire at the first ordinary meeting of the members in every year, at which meeting their suc-

cessors are to be elected; that retiring directors are to be eligible for re-election and are to continue in office until their successors are appointed; that the company may, in general meeting, increase or reduce the number of directors; that the directors may fill up a casual vacancy occurring in the board.

Qualification.

Dominion (s. 75).

Ontario (s. 87).

Quebec (art. 6015).

Manitoba (s. 26).

New Brunswick (s. 85).

A director, to be qualified, must be or become a shareholder. He must hold the number of shares required by the by-laws; must hold them absolutely in his own right, and must not be in arrears in respect of calls on such shares. The by-laws commonly fix the qualification of a director as the holding of one share. Whether possession of the prescribed qualification is a condition precedent to a valid election depends on the wording of the Act and by-laws.

Under the Dominion Act, where a person is named as director in a prospectus or notice in lieu of prospectus the provisions of s. 75 (2) as to filing a consent and a contract to take his qualification shares must be complied with (see p. 23, above).

Nova Scotia (s. 72).

Saskatchewan (ss. 88-91).

British Columbia (ss. 83-86).

The articles commonly require a director to hold a certain number of shares (usually one) as a qualification. Apart from such a provision, a person

need not be a shareholder in order to be a director. If a share qualification is imposed, a director, who is not already qualified, must obtain his qualification within two months (Nova Scotia—three months) after his appointment, or within such shorter time as may be fixed by the articles. If he fails to obtain his qualification, he loses his office and cannot be reappointed until he does obtain his qualification. If an unqualified person acts as director after the expiration of the above period or shorter time, he is liable to a penalty. The acts of a director are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

In British Columbia, at least one director must reside in the province. As to restrictions on appointing directors or naming persons as directors in a prospectus, see p. 18, above.

Alberta (s. 60).

The articles commonly require a director to hold a certain number of shares (usually one) as a qualification. Apart from such a provision, a person need not be a shareholder in order to be a director. As to restrictions on appointing directors or naming persons or directors in a prospectus, see p. 18, above.

Disqualification, retirement, removal.

The by-laws or articles invariably provide that a director shall ipso facto vacate his office in certain events, which are usually the following:

1. If he becomes bankrupt, or compounds with his creditors.
2. If he is found lunatic or becomes of unsound mind.
3. If he ceases to hold the required share qualification.
4. If by notice in writing to the company he resigns his office.

5. If he absents himself from directors' meetings beyond a fixed period without leave.
6. If he holds any office or place of profit in the company, with specified exceptions.

In addition, it is sometimes provided that loss of office shall result from participating in the profits of any contract with the company; but more commonly, in lieu of such a provision, a director is expressly empowered to contract with the company if he discloses his interest and refrains from voting. Furthermore, in Nova Scotia, Saskatchewan and British Columbia a director may lose office if he fails to obtain his qualification within the proper time after his appointment (p. 149), above). A director elected for a definite term cannot be removed without cause, before its expiration, but the by-laws or articles commonly permit the shareholders to remove a director by resolution.

Remuneration.

Directors are not entitled to remuneration unless the by-laws or articles so provide, which they commonly do. Sometimes remuneration is fixed "at the rate of " so much per year, or so much for each meeting attended, or an annual lump sum to be divided as the directors may determine, or it is provided that the remuneration is to be fixed in general meeting by the shareholders; and sometimes the by-laws provide that the directors may fix their own remuneration. The taking of unauthorized remuneration is a misfeasance, and the directors may be compelled to repay sums taken without authorization. They should, therefore, be careful to see that all the requirements in this regard, statutory or otherwise, are rigidly complied with. If the

directors wish to be reimbursed for their travelling and other expenses of attending meetings, they should see that the by-laws or articles expressly so provide, as otherwise they are not entitled to be reimbursed for such expenses.

Statutory provisions.

Nova Scotia.

Saskatchewan.

Alberta.

British Columbia.

The above Acts are silent as to remuneration. The articles govern the matter.

Dominion (ss. 80 (c), 81).

Quebec (art. 6020).

New Brunswick (ss. 90 (c), 91).

Directors may make by-laws for their remuneration, which by-laws are only effective (unless sooner confirmed at a general meeting called for the purpose) until the next annual meeting, when they must be confirmed or lapse.

Ontario (ss. 91, 92).

Directors may make by-laws for their remuneration, but no by-law for the payment of the president or any director shall be valid or acted upon unless (a) passed at a general meeting, or (b) if passed by the directors, until it has been confirmed at a general meeting. Notwithstanding the foregoing provision, a director is not precluded from receiving a reasonable remuneration for services rendered in another and subordinate capacity, e.g., as salesman, even though a by-law authorizing the payment has not been passed.

Manitoba (s. 32).

The directors may make by-laws for their remuneration, but no by-law for the payment of the president or any director shall be valid or acted upon until it has been confirmed at an annual meeting or a special general meeting.

Proceedings.

Directors act at meetings of the board, called by proper notice and at which a quorum is present. If all the directors are present and waive notice, no notice is required; nor is it necessary to send a notice to a director who is out of the country and cannot attend the meeting. The formal acts of the directors are expressed by resolution, or, when the governing Act requires it, e.g., an increase of capital under the Dominion Act, by by-law. A director acting individually cannot exercise the powers of the board. The by-laws or articles will invariably contain full provisions as to the holding of meetings, quorum, notice, etc., and these provisions should be carefully observed. However, strangers dealing with the company, while they are fixed with knowledge of the governing Companies Act, charter or memorandum and registered articles of the company, are not bound to inquire into the regularity of the "indoor management." They are entitled to assume that formalities relating to the internal management have been complied with, e.g., that a resolution has been regularly passed. To this extent informal acts of the directors may bind the company. The Acts of some of the provinces based on s. 74 of the Imperial Act provide that the acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appoint-

ment or qualification, and well-drawn articles commonly contain similar provisions.

Notice of the business to be transacted at a directors' meeting is not necessary in the absence of a contrary provision in the by-laws or articles. Directors must attend in person and cannot cast their votes by proxy. A quorum must be present for the valid transaction of business, and a director who is personally interested in a resolution and therefore disqualified to vote cannot be counted to make up the quorum. In the case of companies incorporated by letters patent the quorum will be determined by the by-laws. In Ontario the quorum cannot be fixed at less than a majority of the board unless the letters patent provide otherwise. In the case of companies incorporated by memorandum, the articles will fix the quorum or authorize the directors to fix it. The number of directors must not be allowed to fall below the minimum required by the statute, articles or by-laws.

The procedure at a directors' meeting is as follows:—

The president, or in his absence the vice-president, takes the chair; or in the absence of both, the directors present elect a chairman. The secretary will produce evidence of service of notice of the meeting. The minutes of the last meeting will be read and directed to be signed as correct. The various items of business are then taken up in order and resolutions moved, seconded and passed. If the by-laws or articles so provide, the chairman has a casting vote in the event of an equality of votes. The minutes should be recorded by the secretary as soon as possible after the meeting and inserted in the minute book. It is advisable to have agenda of

the matters to be taken up prepared, and important resolutions or by-laws drafted, before the meeting. If business of any importance is to be transacted, the company's solicitor should be present at the meeting.

Powers of directors.

Dominion (s. 80).

Ontario (ss. 84, 91).

Quebec (art. 6020).

Manitoba (s. 32).

New Brunswick (s. 90).

In the above jurisdictions (except Ontario) the Act gives the directors general power to administer the affairs of the company and make or cause to be made for the company any description of contract which the company may by law enter into. In addition power is given to pass by-laws relating to a number of specific matters as well as the conduct in all other particulars of the affairs of the company. In Ontario the general power first above mentioned is omitted.

As a general rule the directors can do anything that the company can do, except in so far as the statute, letters patent or by-laws require authorization by a general meeting of shareholders or compliance with other requirements. In some matters the governing Act requires the sanction of the shareholders, e.g., to borrow money; or some further requirement may be imposed, e.g., to change the place of head office it is necessary, in addition to the passing and confirmation of a by-law, to advertise the by-law and file a certified copy in the proper Department. Again, as regards other matters, e.g., increasing the capital, the sanction of supplement-

any letters patent is required. Some things, on the other hand, e.g., the appointing of auditors, can only be done by the shareholders. These matters are considered elsewhere under their appropriate headings.

The management of the company's affairs is in the hands of the directors and cannot be exercised by the shareholders; nor can the shareholders overrule or control the directors, except by way of refusing to confirm by-laws or resolutions requiring confirmation. If the shareholders are dissatisfied with the management, their remedy is to elect a new board at the next annual meeting, or resort to the courts if the directors are acting illegally. If dissatisfied shareholders are in the minority and are, therefore, unable to secure the election of their own nominees to the board, it is sometimes difficult for them to bring their views before the board in an effective way. In such situations the following plan may be useful. The shareholders form a permanent protective committee and send their proxies to it. The members of the committee, armed with their proxies, attend all shareholders' meetings and by putting forward the views and criticisms of the committee as a unit they may be able to exercise some voice in the affairs of the company.

The directors cannot, of course, do anything which the governing Act forbids, e.g., make loans to shareholders; nor can they validly do anything which is beyond the powers of the company itself.

Nova Scotia.

Saskatchewan.

Alberta.

British Columbia.

In each of the above jurisdictions the Act leaves the question of the powers of directors to be deter-

mined by the articles. These commonly confer on the directors a general power to exercise all such powers of the company as are not by the Act, or by the articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of the articles, to the provisions of the Act, and to such regulations, not being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting. The governing Act provides that certain things can only be done by the company by special resolution, e.g., alteration of the objects of the company, or reduction of capital; that certain things can only be done at an annual general meeting, e.g., the appointment of auditors. The articles invariably also provide that certain things shall only be done with the sanction of a meeting of the members. The directors must, of course, exercise their powers in accordance with the provisions of the governing Act and of the articles. If the powers of the directors are found to be unduly restricted by the articles, these can be altered by special resolution of the members (see as to special resolutions, p. 177).

Position and liabilities.

Directors are trustees of the company's property and agents of the company in the transactions which they enter into on its behalf. They stand in a fiduciary relationship to the company, from which it follows that they must assume no part nor do any act inconsistent with a proper, free and independent discharge of their duties. Thus, directors' powers must be exercised bona fide in the company's interest and not to serve some personal interest of their own. A director cannot make a secret profit at the

expense of the company, nor take a secret commission in transactions in which the company is interested. If he does, he must account to the company. It also follows from the director's fiduciary position as trustee that he is disqualified from entering into, or being interested in, contracts with the company, unless authorized by the governing Act, by-laws or regulations, or unless a general meeting of shareholders sanctions the transaction. The by-laws or articles, however, generally contain a provision enabling a director to enter into or be interested in contracts or arrangements with the company, provided he discloses his interest and refrains from voting. If the provisions as to disclosure and not voting are not complied with, the director loses his protection and remains accountable (see further Company Law, p. 475). In a transaction of any magnitude a director contracting with the company is wise to take independent legal advice.

If directors act within their powers; with such care as is reasonably to be expected from them, having regard to their knowledge and experience; and if they act honestly for the benefit of the company, they discharge their duty to the company. They are not bound to have any special qualifications for their office. They may be liable for acts of gross negligence (see Company Law, p. 492); but they are not liable when they have been misled through misrepresentation or concealment by regularly authorized executive officers of the company, where there was no cause for suspicion. It is advisable that the by-laws or articles should contain a provision relieving directors from the consequences of negligence not dishonest.

A director is not bound to take any definite part in the company's affairs. Directors are liable if they wrongfully declare and pay dividends (see p. 226). As to liability for mis-statements in a prospectus, see p. 56. The various Companies Acts impose penalties or liability upon directors for infraction of their provisions. A director should familiarize himself with the Companies Act applicable to his company and see that he is not making himself so liable. One of the most onerous statutory liabilities imposed on directors is the personal liability for unpaid wages of clerks, workmen, etc. The provision in the Dominion Acts reads as follows:—

85. The directors of the company shall be jointly and severally liable to the clerks, labourers, servants and apprentices thereof, for all debts not exceeding six months' wages due for service performed for the company whilst they are such directors respectively; but no director shall be liable to an action therefor, unless the company is sued therefor within one year after the debt becomes due, nor unless such director is sued therefor within one year from the time when he ceases to be such director, nor unless an execution against the company in respect of such debt is returned unsatisfied in whole or in part.

2. The amount unsatisfied on such execution shall be the amount recoverable with costs from the directors.

Similar provisions (in some cases slightly modified) are found in other Acts as follows:—Ontario (s. 98); Quebec (art. 6023); Quebec Mining Companies (art. 6751); Manitoba (s. 35); Saskatchewan (s. 108); Alberta (s. 54).

In some Provinces, e.g., Saskatchewan, Alberta and British Columbia, the liability of directors may be unlimited, if so provided in the memorandum or by special resolution.

CHAPTER X.

MEETINGS.

The immediate control over the affairs of the company rests with the directors (pp. 155, 156). Some things, however, can only be done by, or with the consent of, the shareholders. Furthermore, as the shareholders elect the board of directors, the ultimate control of the company's affairs rests with the majority of the shareholders. By their votes at shareholders' meetings, the shareholders express their views and exercise such right of control over the directors as is conferred on them by the governing Act, by-laws or articles. In the absence of statutory authority, the individual consents of the shareholders, given separately, are not equivalent to a resolution passed at a meeting. Various kinds of meetings are provided for under the different Acts.

First statutory meeting.

Ontario (s. 43, s. 117).

Saskatchewan (s. 74).

Alberta (s. 117).

British Columbia (ss. 34-36).

The Acts of the above provinces provide for a statutory meeting, which must be held within a limited time after the company becomes entitled to commence business. Before the meeting a signed report must be sent out to the shareholders.

In Ontario, these provisions only apply to companies which make a public offering of their shares,

bonds, etc., i.e., companies which have issued a prospectus. A somewhat different provision applies in the case of private companies and companies which make no public offering of their shares or securities. See s. 43 of the Ontario Act at p. 25, above.

In Saskatchewan, these provisions only apply to companies which issue an invitation to the public to subscribe for their shares.

In Alberta, the provisions as to the statutory meeting and report apply to all companies limited by shares whether they make a public offering or not.

In British Columbia, these provisions apply to every company which is not a "private company" (see p. 76).

There is some variation between the corresponding sections in the different provinces. The Ontario section reads as follows:—

117.—(1) Every company shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of its shareholders, which shall be called the statutory meeting.

[As to notice of meetings, see section 44.]

(2) The directors shall, at least ten days before the day on which the meeting is to be held, send to every shareholder a report certified by not less than two directors stating:

- (a) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) The total amount of cash received by the company in respect of such shares so distinguished;
- (c) An abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company;

- (d) The names, addresses and descriptions of the directors, auditors, if any, manager, if any, and secretary of the company; and
- (e) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(3) The report, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, shall be certified as correct by the auditors, if any, of the company.

(4) The directors shall cause a copy of the report so certified to be filed with the Provincial Secretary forthwith after the sending thereof to the shareholders.

(5) The directors shall cause a list showing the names, descriptions and addresses of the shareholders and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any shareholder during the continuance of the meeting.

(6) The shareholders present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the report, whether previous notice has or has not been given, but no resolution of which notice has not been duly given may be passed.

(7) The meeting may be adjourned from time to time, and at an adjourned meeting any resolution of which notice has been duly given, either before or subsequently to the former meeting, may be passed, and at the adjourned meeting the same powers may be exercised as at an original meeting.

(8) If default is made in filing such report or in holding the statutory meeting, then at the expiration of fourteen days after the last day on which the meeting ought to have been held any shareholder may apply to the Court for the winding up of the company, and the Court may either direct that the company be wound up or give directions for the report being filed or a meeting being held, or make such other order as may be deemed just, and may order that the costs of the application be paid by any person who, in the opinion of the Court, is responsible for the default. 2 Geo. V. c. 31, s. 115.

The date at which the company is entitled to commence business, from which the period mentioned in sub-sec. (1) runs, is the date of the certifi-

cate given under s. 114 of the Ontario Act. The notice must state that the meeting is the statutory meeting. For form of notice and of statutory report, see Forms p. 536. In a bona fide case of inadvertent failure to hold the meeting an order directing the meeting to be held may be obtained from the Court on motion supported by affidavit. It is advisable to have the company represented and consent to the order.

Nova Scotia (s. 64).

Every company must hold a general meeting within four months after the memorandum of association is registered. The company is liable to a penalty for default, as are also directors, officers and subscribers to the memorandum, who knowingly authorize or permit such default. If default has been made in holding this meeting, the Court may, on the application of any member of the company, call or direct the calling of a general meeting.

Annual meeting.

Dominion (ss. 77, 80 (e), 88, 94A, 94B, 105).

Ontario (ss. 45, 91 (d), 129, 133, 134).

Quebec (arts. 6024, 6024a-6024d).

Manitoba (ss. 29, 32).

New Brunswick (ss. 35 (2), 86, 90(e)).

A general meeting of the shareholders should be held in each year. The by-laws will contain provisions as to when the meeting is to be held, the place of meeting, notice, etc. Usually the by-laws leave the time and place of the meeting to be determined by the directors from time to time. Any statutory provisions on the subject must, of course, be observed and cannot be overridden by the by-laws.

The business commonly transacted at the annual meeting includes the reception of the report of the president and directors and auditor on the company's operations and its financial condition, confirmation of the by-laws (if any) passed since the last shareholders' meeting, election of directors, appointments of auditors and the fixing of their remuneration. It is desirable also to pass a resolution confirming the acts of the directors since the last annual meeting. For form of notice of meeting, see App. Form 23. As to the procedure at the meeting, see p. 169, below, and as to the form of minutes, Form, p. 325.

Special statutory provisions should be noted as follows:—

Dominion.

Quebec.

In the absence of other provisions in the letters patent or by-laws, the meeting must be held at the place of the head office on the fourth Wednesday in January in each year. If directors are elected, the meeting must be held within the Dominion or the Province (Quebec). The directors must lay before the meeting a balance sheet, financial report, report of auditors, etc., as required by the Act and by-laws. The auditors' report must be read to the meeting and is open to the inspection of any shareholder.

Ontario.

In the absence of other provisions in the letters patent or by-laws, the annual meeting must be held on the fourth Wednesday of January in each year. The meeting must be held at the place where the head office is situated, except when otherwise pro-

vided by the letters patent or by-laws. The meeting may not, however, be held outside of Ontario, unless so authorized by the letters patent or supplementary letters patent (s. 52). The directors must, at least seven days before the date of the meeting, send by post to every shareholder a report containing a balance sheet, abstract of income and expenditure, report of auditors, etc., as required by the Act and the by-laws. The report need not be sent to the shareholders if the by-laws so provide, as they commonly do. The directors' report must be laid before the meeting and the auditors' report must be read at the meeting.

Manitoba.

If directors are elected, the meeting must be held within the Province.

New Brunswick.

The annual meeting can only be held outside the Province if the letters patent so provide.

Special general meetings.

Dominion (ss. 80 (e), 87).

Ontario (s. 46).

Quebec (arts. 6020 (e), 6024a, 6024b).

Manitoba (s. 32).

New Brunswick (ss. 35 (3), 90 (e)).

In the above jurisdictions general meetings of the shareholders, other than annual general meetings, may be called from time to time. Such meetings are special general meetings, called for the transaction of the business specified in the notice summoning them. The business to be transacted is usually the confirmation by the shareholders of a by-law,

passed by the directors and requiring such confirmation. Instances of such by-laws are by-laws varying the number of directors, changing the place of the head office, authorizing the borrowing of money, increasing or reducing the capital stock. For form of notice of meeting see App. Form 24. The various Acts require in most cases that a stated proportion of the issued shares (usually two-thirds) represented at the meeting must be voted in favor of the confirmation of the by-law. In some cases the additional requirement of confirmation of the by-law by supplementary letters patent is also imposed, e.g., where the capital is increased. These details are dealt with under the topics to which such by-laws relate.

The above Acts (except New Brunswick) authorize a stated proportion of shareholders, by requisition, to call or compel the directors to call a special general meeting.

Ordinary general meetings.

Nova Scotia (ss. 65, 66, 67; Tab. A 64 ff., 70 ff.).

Saskatchewan (s. 73; Tab. A 44 ff., 47 ff.).

Alberta (s. 118; Tab. A 30 ff., 35 ff.).

British Columbia (ss. 116, 117; Tab. A 37, 38, 40 ff.).

The articles commonly provide that the general meetings (subsequent to the first or statutory meeting) shall be held at such time and place as may be prescribed by the company in general meeting, and, if no other time or place is prescribed, at such time or place as may be determined by the directors. Such meetings are also usually defined in the articles as "ordinary general meetings," all other meetings being defined as "extraordinary general meetings." The articles further provide for the

mode of calling such meetings and the procedure thereat; and define the business to be transacted at an ordinary meeting, which is usually to consider the profit and loss account, the balance sheet and the reports of directors and auditors, to elect directors and other officers in the place of those retiring, and to sanction dividends. For the form of notice of an ordinary meeting see App. Form 25. It is customary for the articles to state that all business other than that above described transacted at any ordinary meeting, and all business transacted at an extraordinary meeting shall be deemed special; and that notice of the general nature of special business must be given. With articles so worded, special business, if notice thereof is given, can be transacted at an ordinary meeting, but sometimes the articles are so worded that this cannot be done. In such event, if special business is desired to be transacted, the notice will proceed to state that at the same place, on the same day, at a certain hour, or so soon after as the ordinary meeting shall be concluded, an extraordinary meeting will be held, and will specify the business. A general meeting must be held once at least in each year in Nova Scotia and Alberta; in Saskatchewan and British Columbia once at least in every calendar year, and not more than eighteen months (Saskatchewan) or fifteen months (British Columbia) after the holding of the last preceding general meeting. In both Saskatchewan and British Columbia, if the meeting is not so held, a penalty is imposed on the company and directors and officers knowingly parties to the default; and the Court, after default, on the application of a member, may call or direct the calling of a general meeting. In British Columbia every general meeting must be held within the Province.

Extraordinary general meetings.

Nova Scotia (s. 66; Tab. A 65-69, 70 ff.).

Saskatchewan (s. 75; Tab. A 45-46, 47 ff.).

Alberta (s. 118; Tab. A 31 ff., 35 ff.).

British Columbia (ss. 116-120; Tab. A 38 ff.).

Meetings, other than ordinary general meetings, are called extraordinary general meetings, at which only the special business indicated in the notice can be transacted. The articles or Table A invariably authorize the directors to call extraordinary general meetings whenever they think proper, and compel them to call such a meeting on the requisition of a stated proportion of the shareholders and provide that, in default of such meeting being called by the directors, the requisitionists may call the meeting. In Nova Scotia, Saskatchewan, Alberta and British Columbia the Acts contain provisions, in this regard, which cannot be overridden by the articles. Shareholders desiring themselves to call a meeting by requisition should take legal advice.

Notice of meetings.

The by-laws or articles usually contain provisions as to the length of notice, mode of giving notice, etc., and these provisions should be followed with the greatest care; otherwise the meeting may be invalid. In the absence of such provisions, the provisions of the governing Act or Table A (in the case of companies incorporated by registration) will apply. Every shareholder has the right to notice, and even accidental omission to notify any shareholder may make the meeting irregular, unless the by-laws or articles provide, as they often do, that such accidental omission shall not invalidate the meeting. If

all the shareholders are present and do not object to want of notice, notice may be waived. The by-laws or articles usually require service of notice by post. Under some Acts a notice served by post is to be deemed to have been served when the letter containing it would be delivered in the ordinary course of post. Where such provisions apply (e.g., Ontario) it is necessary to allow a sufficient margin of time for the delivery of the letter in computing the interval between the date of the service of notice and the date of the meeting. The secretary should carefully check the names and addresses of the shareholders appearing on the envelopes containing the notice with the register of shareholders and make a statutory declaration of posting the notice. For form, see Forms p. 332. It is convenient to attach the declaration to the minutes of the meeting. The contents of the notice will depend on the nature of the meeting. For forms of notice, see App. Forms 23-26. The by-laws or articles, and, in some cases, the statute, will provide that where special business is to be transacted, the notice must state the general nature of such business. The notice must state the business fairly and accurately, so that the shareholders are put in such a position that each can judge for himself whether he would consent to the proposals coming before the meeting. The notice may be framed in general terms, or may state that the meeting is called for the purpose of considering a specific by-law or resolution. The following are examples:—

For the purpose of considering and, if approved, ratifying and confirming, with or without modification, a by-law passed by the directors in the words and figures following: (set out by-law verbatim).

For the purpose of considering and, if approved, passing with such amendments in, additions to, or omissions from the same as may be proposed at the meeting, the following resolution: (set out resolution verbatim).

To consider and if deemed advisable to confirm, with or without modification, a by-law authorizing the directors of the company (set out effect of by-law).

If the notice is given in the above form relevant amendments within the scope of the notice are permissible, but care should be taken that the amendment does not go beyond the scope of the notice. The notice must state the date, time and place of the meeting. Once a notice is given, the directors cannot, in the absence of special provisions, by a further notice postpone the meeting. If a meeting is adjourned to a definite time, notice need not be given of the adjourned meeting, but the business which may come before the adjourned meeting is limited to that which might have come before the original meeting. The summoning of meetings should be authorized by the board. The secretary cannot summon a meeting without authority; but the directors, acting as a board, may, before the meeting, ratify an unauthorized notice. Shareholders resident abroad are not entitled to notice in the absence of contrary provisions in the articles or by-laws. Where preference shares are issued without voting rights, it will not be necessary to notify preference shareholders, but in such cases it is advisable that the governing provisions should state that such shareholders shall not be entitled to notice of meetings.

Procedure at meetings.

Before the meeting the secretary should prepare agenda for the guidance of the chairman. He should

also have available copies of the notice of meeting with proof of service, the minute book, the by-laws or articles, the register of shareholders and a correct list of shareholders, arranged alphabetically, a list of proxies deposited, and any special material, such as reports, resolutions or by-laws to be brought before the meeting. The by-laws or articles usually provide that the president, or in his absence the vice-president, shall take the chair at meetings. If the articles or by-laws contain no such provision, or if the person entitled to be chairman is not present, the shareholders elect a chairman from among themselves by resolution, duly moved and seconded. The chairman calls the meeting to order and then will ascertain whether there is a quorum present. The number required for a quorum will be stated in the by-laws or articles. If a quorum is not present, no business can be transacted, but the by-laws or articles frequently provide for such cases, e.g., that the meeting is to stand adjourned to the same day in the next week. If there is no such provision, the meeting lapses. If a quorum is present, the chairman, after stating such to be the case, has the secretary read the notice of meeting, a copy of which with proof of service should be annexed to the minutes. The minutes of the last meeting of shareholders will then be read and be directed to be signed as correct. Frequently the minutes are on motion taken as read. If the meeting is a special general or an extraordinary meeting, it will proceed to transact the business specified in the notice. If the meeting is an annual meeting the chairman will read or refer to the directors' report, and present to the meeting the auditors' report and balance sheet. In some jurisdictions (e.g., Dominion and Ontario) the auditors'

report must be *read* to the meeting (see "annual meeting" above). The chairman makes an address to the meeting with reference to the foregoing and ends with a motion that the accounts and the directors' report thereon be adopted. Someone seconds the motion, and, after discussion, the motion is put to the meeting. Usually the motion is carried unanimously; but if the shareholders are dissatisfied, they may refuse to pass the motion, which will amount to a vote of censure, but is otherwise without effect. A majority of the shareholders can, however, put in a new board in place of the outgoing board; or, if there are any directors whose term of office has not expired, they may remove any one or more of them. This must, of course, be done in accordance with the by-laws or articles, which generally impose special formalities in this regard, involving among other things the giving of proper notice of the intended resolution. Another remedy of dissatisfied shareholders is to appoint, or cause to be appointed, an inspector to investigate the company's affairs (see "Inspectors," page 275).

The chairman may, with the approval of the meeting, apply the closure and end discussion. The vote will then be taken, usually in the first instance on a show of hands, on which each shareholder has one vote on his own shares, but no vote on the shares which he may represent by proxy. If, however, under the governing Act or by-laws or articles, a person who is not a shareholder may hold a proxy, he has one vote on a show of hands. It should be noted that, in Ontario, the Act expressly states that a proxy for an absent shareholder shall not vote on a show of hands. A poll may then be demanded by any shareholder, or by the requisite

number, if the regulations state that only a given number of shareholders may demand a poll. The poll will be taken in such manner as the chairman directs, unless the by-laws or articles provide for the manner of taking it, in which case such provisions must be followed. In the absence of regulations to the contrary the poll may be taken at the meeting. Scrutineers should be appointed by the meeting to take the vote (which should be done in writing) and report the result to the chairman, who declares the result in accordance with such report. The votes of shareholders, if any, in arrear as to calls, or under irregular proxies, will be rejected and the reason for rejection noted. Whether votes may be given by proxy depends on the governing Act or regulations. A shareholder may vote to further his own interests. In the absence of provision in the articles a poll can not be taken by polling papers sent out to the shareholders. A poll is desirable where any matter of importance is to be decided. The Act, by-laws or articles, will usually confer on the chairman a second or casting vote, in the case of a tie.

In the case of an annual or ordinary meeting after the report of the directors has been approved, the meeting then proceeds to deal with the election of directors, the appointment and the fixing of the remuneration of auditors, and the declaration of a dividend (if any) in the case of companies incorporated with memorandum and articles, where the articles so provide. In some jurisdictions, e.g., Dominion and Ontario, the election of directors must be by ballot unless the by-laws otherwise provide (see p. 146, above). The resolution appointing the auditors and fixing their remuneration should be

moved and seconded by shareholders who are not directors or officers. After the ordinary business of the meeting is concluded, the special business, if any, mentioned in the notice of meeting will then be proceeded with. When all the business is finished, on motion made, seconded and carried, the meeting adjourns.

Proxies.

There is no common law right to vote by proxy, but such right is usually conferred by the governing Act, by-laws or articles. The following are the statutory provisions:—

Dominion (ss. 80, 88).

Manitoba (ss. 30, 32, 58).

New Brunswick (ss. 90, 96 (b)).

The above Acts provide that, in default of other provisions in the letters patent or by-laws, at all general meetings of the company every shareholder shall be entitled to as many votes as he holds shares in the company, and such votes may be given in person or by proxy, if such proxy is himself a shareholder (the latter requirement not being imposed in Manitoba). But a shareholder in arrear of calls is not entitled to vote. The directors are entitled by by-law to regulate the requirements as to proxies. The formalities required by the by-laws must be observed, but if there are no by-laws governing the matter nothing more is required for a proxy than its valid execution by the shareholder. For form of proxy, see App. Form 27.

Ontario (ss. 50, 51, 81).

Quebec (arts. 6024e, 6024f, 6020).

Provisions similar to those above noted are in force in Ontario and Quebec; but must be read sub-

ject to a special section dealing with proxies. The Ontario section reads as follows, the Quebec section being similar, but omitting the last sub-section.

51.—(1) The instrument appointing a proxy shall be in writing under the hand of the appointor, or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under the common seal or under the hand of an officer or attorney so authorized, and shall cease to be valid after the expiration of one year from the date thereof.

(2) No person shall act as a proxy unless he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy or has been appointed to act at that meeting as proxy for a corporation.

(3) A proxy for an absent shareholder shall not have the right to vote on a show of hands.

(4) An instrument appointing a proxy may be according to Form 6 or such other form as may be prescribed by the by-laws of the corporation and shall not contain anything but the appointment of the proxy or a revocation of a former instrument appointing a proxy.

(5) An instrument appointing a proxy may be revoked at any time. 2 Geo. V. c. 31, s. 49.

(6) The directors may by-law prescribe the period of time immediately preceding any special or general meeting of the shareholders within which the instrument appointing the proxy shall be deposited with the company; provided that in no case shall such period of time exceed seventy-two hours immediately preceding the meeting for which such proxy is to be used or acted upon; and further provided that any period of time so fixed shall be specified in the notice calling the meeting. 9 Geo. V. c. 41, s. 2.

For the form provided in sub-sec. (4) above, see App. Form 28.

The Quebec form is Form N in the schedule to the Act.

Nova Scotia (Tab. A 77-93, ss. 67, 68).

Saskatchewan (Tab. A 58-65, s. 80).

Alberta (Tab. A 48-51, s. 121).

British Columbia (Tab. A 55-58, ss. 119, 128).

In the above jurisdictions the provisions as to proxies and voting will be found in the articles or,

if there are no articles, then in Table A. In either event, these regulations must be followed. In default of any regulations as to voting, every member is to have one vote, but it is usual for the articles to provide that every member shall have one vote for each share held. In Nova Scotia and British Columbia there is a special provision for representation of companies at meetings of other companies of which they are members.

The chairman's decision as to the validity of proxies is binding until held by the Court to be wrong. Where the by-laws or articles provide that proxies must be lodged a certain number of hours before a meeting or adjourned meeting, it is not a compliance with the requirement to lodge them a specified number of hours before the poll is taken. The name of the proxy may be left blank and may be subsequently filled in before use by some person authorized. It is advisable, however, to name several persons alternatively. Directors may, at the company's expense, send out forms of proxy in which the directors are named, accompanied by stamped envelopes for the return of the forms. The instrument appointing a proxy may be revoked before the proxy has voted. All instruments appointing proxies should be kept among the company's records.

For forms of instruments appointing proxies, see App. Forms 27, 28.

Adjournment.

The chairman has no power to adjourn a meeting at his own will before it has finished the business for which it was convened, and if he wrongfully adjourns the meeting the shareholders may select a

new chairman and proceed with the business of the meeting.

Under the Ontario Act, the chairman may, with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn any meeting from time to time and from place to place (s. 48).

In the case of companies incorporated by registration, the articles usually provide that the chairman, with the consent of the meeting, may adjourn the same; and Table A of the Alberta Act so provides. Where such a provision is adopted the majority can not compel the chairman to adjourn the meeting if he thinks otherwise. Table A of the Nova Scotia, British Columbia and Saskatchewan Acts makes it compulsory for the chairman to adjourn the meeting if so directed by the meeting, and provides that if a poll is demanded on the question of adjournment it must be taken forthwith.

As an adjourned meeting is a continuation of the original meeting, no new notice is required in the absence of special provisions in the by-laws or articles. The adjournment must, of course, be to a definite place, date and time.

In Nova Scotia, Saskatchewan and British Columbia, if Table A applies, a new notice is required if the adjournment is for ten days or more.

No business may come before the adjourned meeting which could not have come before the original meeting.

The matter of adjournment of meetings is referred to in the various Acts as follows:—Ontario (s. 48); Nova Scotia (Tab. A 72, 74-76, 80); Saskatchewan (Tab. A 50, 53, 57); Alberta (Tab. A 41); British Columbia (Tab. A 43, 46).

Special resolutions and extraordinary resolutions.

Nova Scotia (ss. 69, 70).

Alberta (ss. 120, 122, 123).

The above Acts do not define an extraordinary resolution. A resolution is to be deemed special

whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the regulations of the company to vote as may be present in person or by proxy in cases where by the regulations of the company proxies are allowed at any general meeting of which notice specifying the intention to propose such resolution has been duly given; and such resolution has been confirmed by a majority of such members for the time being entitled according to regulations of the company to vote as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed. (Alberta).

In Nova Scotia, whenever a resolution has been unanimously passed at any general meeting, all the members of the company being present in person or by proxy, the resolution is to be deemed a special resolution and no confirmation of such resolution at any subsequent meeting is to be necessary; provided that notice of the intention to propose such a resolution as a special resolution has been given in the notice calling such a meeting.

Saskatchewan (ss. 79, 81, 82).

British Columbia (ss. 2, 124, 162).

A resolution is an extraordinary resolution

when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

A special resolution is one which has been

- (a) Passed in manner required for the passing of an extraordinary resolution; and
- (b) Confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month from the date of the first meeting.

In British Columbia the term "special resolution"

includes a resolution passed at any general meeting of a private company by a unanimous vote of all members entitled to vote, where all such members are present in person or by proxy (where proxies are allowed), and the notice specifying the intention to propose the resolution states that in case of a unanimous vote no subsequent general meeting to confirm the resolution will be necessary.

It will be seen from the above that a special resolution (except in Nova Scotia and British Columbia in some cases) requires passing and confirmation at *two separate meetings*. An extraordinary resolution only requires to be passed at one meeting. The articles often require the passing of an extraordinary resolution for certain purposes, e.g., the removal of directors. For some purposes, e.g., the alteration of articles, the statute requires a special resolution. The articles themselves often provide that certain things are only to be done by special resolution. In some cases, such as alteration of the company's objects or reduction of its capital, confirmation by the Court is required in addition to a special resolution.

The sections of the Acts above noted contain provisions relating to the procedure at meetings at which special resolutions are passed and confirmed, and such provisions must be carefully followed. It is usual to set out the full text of the resolution in the notices calling the meetings.

A slight amendment of the resolution at the first meeting may be valid, but there can be no amendment at the second meeting. The second meeting merely confirms or rejects the resolution previously passed. Unless the articles so permit (as they often do), one notice calling both meetings, the second contingently on the resolution being passed at the first, is invalid. But even if the articles contain no such permission, a second notice can be obviated by stating in the notice that a further extraordinary meeting will be held at (place, date, time) to receive a report of the proceedings of the first meeting, when the resolution, if passed by the requisite majority at the first meeting, will be submitted for confirmation as a special resolution. See App. Form 26.

A copy of every special resolution must be forwarded to the registrar for recording within fifteen days from its confirmation. In British Columbia an extraordinary resolution must also be filed with the Registrar. Where articles have been registered, a copy of every special resolution must be annexed to or embodied in every copy of the articles subsequently issued. In Nova Scotia special resolutions must be printed.

By-laws requiring confirmation.

By-laws passed by the directors should be confirmed by the shareholders at the earliest opportunity. Some by-laws do not take effect until confirmed; others require compliance with additional formalities before becoming effective, e.g., filing in some government department, advertising, supplementary letters patent. These requirements are dealt with under the topics to which they apply. Other

by-laws must be confirmed at or before the next annual meeting after their passage, otherwise they lapse. By-laws respecting agents, officers and servants, under the Dominion, Quebec and New Brunswick Acts, are excepted from the last mentioned requirement.

The more important by-laws, in the different jurisdictions requiring confirmation, are as follows. It should be noted that in some cases confirmation by a stated proportion of the shareholders is requisite.

Dominion.

For use of company's funds in purchase of stock in other corporations (s. 44).

Creating preference shares (s. 48)—Such by-laws may also be unanimously sanctioned in writing by the shareholders.

Increase or reduction of capital or subdividing shares (ss. 52, 54).

Borrowing and issuing securities (s. 69).

Altering number of directors or location of head office (s. 76).

Generally (ss. 80, 81).

Ontario.

Distribution of assets (s. 15).

Authorizing application for supplementary letters patent (s. 16).

Change of name (s. 40).

Borrowing and issuing securities (ss. 78, 79).

Creating preference shares (ss. 78, 79).

Varying number of directors, quorum, changing location of head office (s. 90).

Payment of president or directors (s. 92).

Purchase of shares in other companies (s. 94).

Dividends by mining company (s. 95).

Removal of books from head office (s. 119).

By-law of mining company authorizing issue of shares at a discount (s. 148).

Generally (s. 91).

NOTE.—Any by-law requiring confirmation may, in lieu of confirmation at a general meeting, be confirmed by the consent in writing of all the shareholders (s. 144).

Quebec.

For use of company's funds in purchase of shares in other corporations (art. 5985).

Creating preference shares (art. 5989).

Increase or reduction of capital, subdivision or consolidation of shares (arts. 5993, 5994, 5995).

Borrowing and issuing securities (art. 6009).

Increase or reduction of directors, change of head office (art. 6016).

Generally (art. 6020).

Manitoba.

Generally (s. 32).

Disposal of stock, payment of president or directors (s. 32 (4)).

Increase or reduction of capital or subdivision of shares (s. 41).

Issue of shares at a discount (s. 45).

Purchase of stock in other companies (s. 70).

Borrowing and issuing securities (ss. 71, 72).

Preference shares in certain cases (s. 75).

New Brunswick.

Use of funds in purchase of shares of other corporations (s. 49).

Issuing shares at a discount, payment of president or directors (s. 52).

Preference shares (ss. 53-55).

Increase, reduction of capital, subdivision of shares (s. 58).

Making company a close corporation (s. 74).

Borrowing and issuing securities (s. 77).

Change of head office, increase or decrease of directors (s. 85).

Generally (s. 91).

CHAPTER XI.

BORROWING.

Every trading company, i.e., a company incorporated to carry on trade or business for the purpose of profit or gain, will usually require to borrow money from time to time; and such companies have an implied power to borrow money for the purpose of their undertaking. There are various ways in which a company's power to borrow money may be exercised, e.g., by unsecured loan, overdrawing its bank account, by means of bills of exchange or promissory notes, or, for borrowing of a less temporary nature, by means of mortgage of its real or personal property, or by an issue of bonds or debenture stock.

All the Acts, except the British Columbia Act, contain express provisions authorizing the company to borrow money. In British Columbia the power to borrow and mortgage may be given by the memorandum of association, but, if omitted, may be implied on the principle above mentioned. The effect of the provisions of the various Acts is briefly as follows:

Statutory provisions regarding the borrowing of money.

Dominion (ss. 69-69M).

Ontario (ss. 78, 79, 82, 114).

Quebec (arts. 6009-6009a).

Manitoba (ss. 71-72).

New Brunswick (s. 77).

The company's borrowing powers and the power to give security for moneys borrowed become

exercisable by the directors upon the passing of a by-law confirmed by a vote of not less than two-thirds in value of the subscribed stock (Ontario "issued capital stock") represented at a general meeting duly called for considering the by-law.

Under the Dominion and New Brunswick Acts the directors, if so authorized, may limit or increase the amount to be borrowed. The by-law is usually passed in the course of the organization of the company and confirmed by all the shareholders. The notice of meeting of shareholders to confirm the by-law should specify the terms of the by-law. The authorization to borrow conferred by the by-law should be in general terms. It is desirable that the borrowing by-law should itself provide for the appointment and authorization, by resolution of the board, of the officers who negotiate loans and sign the various instruments in connection therewith. It may be desirable from time to time to change the signing officers, and where this can be done by a board meeting no delay need arise. For a form of borrowing by-law and banking resolution see App. Forms 29, 31.

Most banks require the borrowing by-law and the signing officers' resolution to be on the bank's special form, which is obtainable from the bank; but it is generally advisable in any event to pass and confirm the general form of by-law above mentioned, in addition to the special form required by the bank. Borrowings by discounting of commercial paper, or on bills of exchange or promissory notes drawn, accepted or endorsed by the company, are excepted by the above Acts from the requirement of a borrowing by-law, but in practice banks invariably and properly require a by-law before any discounting is done. The power to draw, make or accept bills of

exchange or promissory notes is usually taken in the letters patent of Dominion, Manitoba and Quebec companies. In Ontario (s. 23(1)), and New Brunswick (s. 14(1)(1)) the power is one of the ancillary powers conferred by the Act.

Nova Scotia (ss. 76, 85-91).

Saskatchewan (ss. 122, 120).

Alberta (ss. 98, 98a, 103, 107),

British Columbia (ss. 32, 93-106).

In the above jurisdictions (except British Columbia) the Act expressly confers the power to borrow and give security, subject to the conditions of, and in addition to, all other powers conferred by the Act. In Saskatchewan and Alberta such powers are, however, forbidden to be exercised, except with the sanction of a resolution of the company previously given in general meeting.

In Nova Scotia, the power to execute mortgages of the company's property, or to issue debentures, secured by mortgage or otherwise, is forbidden to be exercised, except with the sanction of a special resolution of the company previously given in general meeting. The directors are usually, by the articles, given express power to borrow and give security (see Forms p. 44), or, under a general clause in the articles, are given the powers of the company. Generally the power to borrow and give security is one of the express objects set out in the memorandum. It is usual, in the organization stage, to have a general borrowing resolution passed by the members, and also to pass, pursuant thereto, a resolution of the board regulating the exercise of the powers conferred by the general borrowing resolution (see App. Forms 30, 31). Most banks

require their special forms to be used (see p. 21, above).

The power to draw, make or accept bills of exchange or promissory notes is usually taken in the memorandum of companies incorporated under the above Acts.

Specially limited mining companies.

Alberta (s. 63a (10)).

British Columbia (s. 21 (2) (k)).

Specially limited mining companies may borrow money. The amount borrowed must not, without the sanction of a general meeting, exceed one quarter of the amount of the capital for the time being paid up. This restriction will not affect any power of borrowing money vested in the board of directors under the memorandum or articles (or by-laws; *Alberta*).

Limitations on the power to borrow and precautions to be observed by lenders.

The various Companies Acts do not generally prescribe any limit to the amount which a company may borrow, but limitations may be imposed by the letters patent or supplementary letters patent, or the memorandum of association or articles of association, as the case may be, and by the borrowing by-law or resolution, but the express powers conferred by the governing Act and by the letters patent or memorandum and articles may not be exceeded. It is, therefore, necessary for persons dealing with the company carefully to scrutinize all the foregoing documents.

As to limitation on borrowing powers of mining companies in *Alberta* and *British Columbia*, see above.

A lender should assure himself that the company's borrowing by-law or resolution has been sanctioned in strict accordance with the terms of the governing statute, but informalities in the preliminary steps leading to the passing of the by-law or resolution will not prejudice the position of the lender who makes advances bona fide and without notice of such informalities. As regards matters of internal management, such as length of notice of meeting, fullness of notice, etc., in the absence of information to the contrary, the lender is entitled to rely on the written assurance of the company's officers that the by-law or resolution was duly passed. The lender should obtain a copy of the by-law or resolution certified under the company's seal by the president and secretary as having been validly passed. In some cases the lender may assume that the by-law or resolution necessary to sanction the borrowing has been passed (see Company Law, p. 366).

The lender should also satisfy himself that the persons who negotiate the loan and sign on the company's behalf have been properly authorized. The lender is not concerned to inquire as to the object of the borrowing, but if he knows that the object is illegal he cannot recover his loan.

The giving of security for existing enforceable debts of the company is not borrowing, and in such cases the person taking the security may be protected even though the statutory requirements have been disregarded (see Company Law, p. 369).

In some jurisdictions, e.g., Ontario, Saskatchewan, Alberta and British Columbia, borrowing powers cannot be exercised until the company is entitled to commence business, if the company is one

which is bound to obtain a certificate from the Provincial Secretary or Registrar that it is so entitled (see p. 34 ff., above). A person proposing to lend money to a new company or to any company, if the amount involved is considerable, should take legal advice and see that he gets the best security available. Advances are sometimes attempted to be secured by the issue of treasury shares to the lender. Such security is generally illusory and dangerous and may result in leaving the lender liable as a holder of unpaid shares in the liquidation of the company.

There is legislation in every province prohibiting an extra-provincial company or foreign corporation from doing business in the province unless or until it is licensed or registered. Accordingly, in the case of such companies, it is advisable to be satisfied that such regulations have been complied with, or that compliance is unnecessary in the particular transaction in question.

Where a company mortgages its lands or chattels, the provisions of the local Registry Act or Land Titles Act, or Act dealing with the registration of chattel mortgages, must be complied with in order to give priority to the lender. These Acts require registration of a land mortgage in the proper registry or land titles office and the filing of a chattel mortgage within a limited number of days after its execution. In addition, in some jurisdictions, special provisions as to registration with the Secretary of State, Provincial Secretary or Registrar of Companies or otherwise, apply in the case of certain designated securities, including bond mortgages (see pp. 192 ff., below). In jurisdictions where no such provisions are in force, a lender may be well advised

to obtain a statutory declaration of a responsible officer of the company that the company has no bonds, debenture stock or other evidences of indebtedness secured against its assets outstanding, or, if any, a declaration showing what the amount is. It frequently happens that the company's bankers may hold an issue of bonds, an assignment of book debts or a security under s. 88 of the Bank Act to secure moneys advanced, or some of the company's assets, e.g., machinery, may be subject to a lien for unpaid purchase money, in all of which events the lender's security may be postponed in whole or in part to such prior securities or liens.

To summarize the more important of the foregoing, the lender should satisfy himself

(a) That there is express or implied power to borrow and to give security, including the security in question;

(b) That if there is any limitation on borrowing it will not be exceeded by the proposed advance;

(c) That the mortgage or other security is in proper form and duly executed;

(d) That the security is duly registered, if requiring registration, under the Registry Act or Land Titles Act; Bills of Sale and Chattel Mortgage Act; and/or the governing Companies Act;

(e) That all proper searches are made, including a search of the company's register of mortgages and charges and the register kept by the departmental official, where the same are provided for under the governing Act;

(f) That the company holds a certificate that it is entitled to commence business, where such is required;

(g) That the company, if an extra-provincial or foreign corporation, is properly qualified within the jurisdiction by registration or license; and

(h) That a search has been made for receiving orders or authorized assignments under the Bankruptcy Act, also whether any petition for a receiving order has been filed with the Bankruptcy Registrar.

Bonds, debentures and debenture stock.

The terms "bonds" and "debentures" are commonly used without any distinction of meaning in

this country. For the distinction between bonds and debenture stock, which is not a very common security in Canada, see Company Law, p. 387. The term "bond" is not a technical one, but is commonly applied to a security for money, called on its face a bond, and providing for the payment of a specified sum to the owner or bearer with interest in the meantime. A bond may be a mere promise to pay, or a promise to pay secured by mortgage or charge, either in the bond itself or in a separate deed of trust, or by a combination of both. It is usual and desirable to secure bonds by a separate deed of mortgage and trust in favor of a trust company as trustee for the bondholders, and to have the bonds state on their face that they are issued subject to the terms of the trust deed, the provisions of which are to be deemed incorporated in the bonds. The trust deed usually contains a specific mortgage of the lands and other fixed assets, against which it is registered as an encumbrance in compliance with local registration laws; it also sometimes contains a specific mortgage of chattels; also a floating charge on all the other assets and the undertaking of the company present or future. Such a charge attaches to the assets in the varying condition in which they happen to be from time to time, and the company may deal with such assets in the ordinary course of business, until the security has become enforceable and the trustee has determined or become bound to enforce the same. Where the trust deed contains a mortgage of the chattels of the company, whether by way of floating or specific charge, it will be necessary to file the trust deed as a chattel mortgage in the jurisdiction where the chattels are situate, if local Bills of Sale and Chattel Mortgage Acts require

such registration (see p. 187, above). As to the nature of a floating charge see further Company Law, p. 389.

Bonds usually provide for the payment of the principal at a fixed date, but may be made payable on a contingency, such as default in payment of interest, a winding-up order being made against the company, or the company ceasing to carry on business. The payment of interest is usually provided for by coupons payable to bearer attached to the bonds, the coupons being detached as they fall due, when they are presented for payment at the bank or other stated place where they are expressed to be payable. Bonds are usually made payable to bearer, with an option to the holder to have them registered and thus made payable to the registered holder, whereupon they can only be transferred by instrument in writing signed by the registered holder or his attorney and registered in the bond register at the office of the trustee and such transfer duly noted by endorsement on the bond. It is also provided that a transfer to bearer may subsequently be registered, after which the bond passes by delivery until registered in the name of the holder; but that, notwithstanding registration, the interest coupons are to continue payable to bearer. Transfer tax is payable on the transfer of bonds (Dominion tax); also in Quebec (pp. 134, 138).

The position of a bondholder is different from that of a shareholder. A bondholder is a secured creditor, usually a mortgagee; the moneys secured by his bonds are a debt constituting a prior charge on the assets and earnings of the company; and if principal and interest are not paid, the bondholders can take, or can cause to be taken on his behalf,

appropriate proceedings for the enforcement of his rights. A shareholder, on the other hand, is a partner rather than a creditor, owning such interest in the assets and earnings of the company as remains after liabilities and charges, including bonds, have been provided for. In other words, the shareholders are the owners of the equity in the business.

If there is default under the provisions of the trust deed, i.e., if one of the events happens, on the occurrence of which the security is expressed to become enforceable, such as non-payment of interest for a specified time, or permitting a creditor to levy an execution, the bondholders are entitled to enforce their security. But the bondholders need not always wait until there is default, and the Court will, in a proper case, at the instance of the bondholders, appoint a receiver, where, e.g., judgments have been recovered against the company and executions are likely to issue; the principle being that the bondholders need not stand by and see the assets seized by unsecured creditors.

The remedies open to bondholders where the bonds are secured by deed of mortgage and trust will depend on the terms of the trust deed, and may include the appointment of a receiver and manager, sale or foreclosure, and such remedies are usually by the trust deed made exercisable by the trustee only on behalf of the bondholders, and not by the bondholders individually. See Company Law, p. 406.

Most trust deeds provide for the modification or compromise of the rights of bondholders by the vote of a stated majority at a meeting of the bondholders. It may be sometimes advisable, both in the interests of the company and of the bondholders, to resort to

such provisions, e.g., in order to postpone the due date of the principal and interest, or in order to waive compliance with sinking fund provisions, or in order to permit the issuance of prior lien bonds, etc. If the company gets into difficulties and cannot pay its bond interest, in a great many cases the bondholders cannot hope to get their money back by realizing by means of a sale under the trust deed. Some plan of reorganization or readjustment of the company's indebtedness will then be put forward, whereby the bondholders will be required to submit to a modification of their security or to take securities of a new company formed to take over the business of the company. The required majority of bondholders can bind all the bondholders to an acceptance of the plan.

A person proposing to purchase bonds or lend money on the security of bonds, should obtain a legal opinion beforehand. If the bonds are being sold to the public, a copy of the legal opinion obtained by the issuing house will usually be available free of charge. For a discussion of the precautions to be observed by purchasers of securities, see p. 61, above.

Registration of mortgages and charges.

In addition to the requirements as regards registration of land mortgages or chattel mortgages, in the jurisdictions where the lands or chattels are situated (see p. 187, above) the regulations applicable to companies incorporated under the following Acts should be noted:—

Dominion.

The company must keep a register of mortgages and enter therein certain particulars in respect of

all mortgages and charges specifically affecting property of the company. The ruling of the pages of the register may vary according to circumstances, but it will be sufficient, in most cases, to have six columns under the following headings:—Date of mortgage or charge; short description of property mortgaged or charged; amount of charge created; name and address of mortgagee or person entitled to the charge; date of discharge of mortgage or charge. In the case of securities to bearer, the names of the persons entitled thereto are not required.

Certain mortgages and charges created after January 1, 1918, must be registered with the Secretary of State. Section 69A provides as follows:—

69A.—(1) Every mortgage or charge created after the first day of January, nineteen hundred and eighteen, by a company, and being either,—

- (a) a mortgage or charge for the purpose of securing any issue of debentures; or,
- (b) a mortgage or charge on uncalled share capital of the company; or,
- (c) a floating charge on the undertaking or property of the company;

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with an original of the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the Secretary of State of Canada, for registration in manner required by this Act, within thirty days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured; and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable: Provided that,—

- (i) in the case of a mortgage or charge created out of Canada comprising solely property situate outside Canada, the delivery to and the receipt by the Secretary of State of

Canada of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and thirty days after the date on which the instrument or copy could in due course of post, and if despatched with due diligence, have been received in Canada, shall be substituted for thirty days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the Secretary of State of Canada; and,

- (ii) where the mortgage or charge is created in Canada, but comprises property outside Canada, the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and,
- (iii) the holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.

(2) The Secretary of State of Canada shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the first day of January, nineteen hundred and eighteen, and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu*, is created by a company, it shall be sufficient if there are delivered to or received by the Secretary of State of Canada, within thirty days after the execution of the deed containing the charge, or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

- (a) the total amount secured by the whole series; and,
- (b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and,
- (c) a general description of the property charged; and,
- (d) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or if there is no such deed, one of the debentures of the series; and the Secretary of State of Canada shall, on payment of the prescribed fee, enter those particulars in the register:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Secretary of State of Canada for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(4) Where any commission, allowance, or discount, has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent, of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5) The Secretary of State of Canada shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with.

(6) The company shall cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered:

Provided that nothing in this sub-section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(7) It shall be the duty of the company to send to the Secretary of State of Canada for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Secretary of State of Canada on the registration.

(8) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee.

(9) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient. Imp. Act, 1908, s. 93.

For fees, see Table of Fees, p. 357, below.

Section 69D provides that the company, or any person interested, may, in certain cases, apply to the Court in the province of the company's head office for relief for non-compliance with the requirements as to registration, or on account of omissions or mis-statements with respect to mortgages or charges. Section 69E provides for entry of satisfaction by the Secretary of State on the register where the mortgage debt has been paid, and that he is to furnish the company with a copy of such entry if required. Section 69F requires the Secretary of State to keep an index of registered mortgages and charges. Section 69I gives a right of inspection, to creditors and shareholders, of copies of instruments creating mortgages and charges and of the company's register of mortgages. Section 69J entitles debentures holders to inspect the register of debenture holders and to have a copy of the trust deed. See further Company Law, pp. 351-357, 398.

Ontario.

Section 82(2) provides that a duplicate original of a charge or mortgage, etc., made to secure bonds,

debentures, debenture stock or other securities shall be forthwith filed in the office of the Provincial Secretary, as well as registered under the provisions of any other Act in that behalf. Failure to file in accordance with the section does not invalidate the security.

Quebec.

The company must keep a register of mortgages and enter therein certain particulars in respect of all mortgages and charges affecting property of the company (art. 6025a). As to the particulars to be entered in the register, see p. 193, above.

Article 6009a provides that the holder of any debentures or other securities is entitled to a copy of the trust deed on payment of the prescribed fee, and imposes a penalty on the company and its officers for failure to comply with the article.

Nova Scotia.

Sections 85-91 contain provisions which are similar to those of the Dominion Act above noted, but are somewhat more elaborate.

Manitoba.

A duplicate original of every charge, mortgage or other instrument of hypothecation or pledge, made to secure bonds, debentures or other securities of a like nature, is to be forthwith filed in the office of the Provincial Secretary (s. 71(d)).

Section 71A provides as follows:—

71A.—(1) Every floating lien or charge created by any bond, debenture or other instrument on any personal property of any company shall, so far as any security on the said personal property is thereby conferred, be void as against *bona fide* purchasers or mortgagees for valuable consideration, or the

authorized trustee under The Bankruptcy Act, being chapter 36 of the Statutes of Canada, 9-10 George V. (1919, First Sess.) and amendments thereto, or any creditor of the company, unless there is registered in the office of the County Court of the judicial division within which is situated the personal property, or any part thereof, upon which the floating lien or charge is created, within twenty-one days after the date of the creation of the said floating lien or charge, an affidavit setting forth the following particulars:

(a) The total amount secured by the bond, debenture or other instrument, or series of bonds or debentures.

(b) A general description of the property charged.

(c) A true copy of the bond, debenture or other instrument, or one of any series of bonds or debentures.

(2) Sections 14, 15, 16, 17, 18, 19 and 20 of The Bills of Sale and Chattel Mortgage Act, chapter 17 of the Revised Statutes of Manitoba, 1913, shall, *mutatis mutandis*, apply to any such affidavit. Provided that the time for registration of the affidavit in respect of a floating lien or charge created outside the province on personal property within the province shall be within thirty days after the date of the creation thereof.

Alberta.

The company must keep a register of mortgages specially affecting property of the company and enter therein certain particulars (s. 103(e)).

Every mortgage or charge created after the last day of June, 1922, by any company registered under the Companies Ordinance shall, so far as any security on the company's property or undertaking is thereby conferred, be void against bona fide purchasers and mortgagees for valuable consideration unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) or a true copy thereof are delivered to or received by the Registrar of Companies for registration in the manner required by the ordinance within twenty-one days after the date of its creation, without prejudice to any contract or obligation for repayment of money thereby secured, and when a mortgage or charge

becomes void under the section the moneys secured thereby shall immediately become payable (s. 103).

British Columbia.

Sections 93-103 contain provisions which are similar to those of the Dominion Act above noted, but are somewhat more elaborate.

CHAPTER XII.

CONTRACTS AND OFFICERS.

Contracts.

The board of directors, acting as such, as a general rule have power to bind the company by any arrangement or contract which is within the corporate powers of the company. In some cases, e.g., a contract to sell or dispose of the undertaking of the company under the Ontario Act, the consent of a specified majority of shareholders is required; and in transactions of importance the directors frequently obtain the approval of the shareholders, even though it may not be strictly required.

While the general power of management of the company's affairs is vested in the directors, they commonly delegate, in pursuance of the by-laws or articles, the performance of many acts, including the making of contracts, to an executive committee or to officers and agents of the company. Any contract by such committee, officer or agent made in pursuance of a valid delegation will be binding on the company.

A person contracting with a company will have to satisfy himself by reference to the governing Act, letters patent or memorandum of association, that the contract is within the powers of the company, and every person will be deemed to have knowledge of their contents. In the case of a company incorporated by registration, a person contracting with the company is also deemed to have notice of the contents of the registered articles, including any restrictions on the powers of directors and officers,

and any regulations as to the formalities in connection with affixing the corporate seal. As regards the by-laws of companies incorporated by letters patent, these are not public documents, and persons contracting with the company are not fixed with knowledge of their contents. Possibly a different rule applies in Manitoba, where a copy of the by-laws must be filed with the Provincial Secretary (s. 29A). Nor are persons dealing with a company bound to inquire into the regularity of matters of internal management, e.g., whether an officer has been validly appointed. Where a contract is made by an officer or agent on the company's behalf, the person dealing with him should satisfy himself as to his authority. Where the authority of the officer or agent is doubtful, or in transactions of any magnitude, it is advisable to insist on the production of a properly certified copy of a resolution of the board of directors authorizing the specific contract or transaction proposed to be entered into on the company's behalf. Contracts are, however, made daily by companies, where it is impracticable or undesirable for the person dealing with the company to inquire into the authority of the person acting on the company's behalf, e.g., where goods are ordered for the company by letter or verbally. In such cases of contracts by an agent within his apparent authority the company will usually be liable, unless the other person knew of the agent's lack of authority. See *Company Law*, pp. 139-142.

The common law rule was that a corporation was not bound by a contract unless it was under the corporate seal; exceptions to the rule are contracts in respect of trivial matters of every-day occurrence, and contracts of trading corporations entered into

in the ordinary course of business. Some of the Companies Acts contain provisions relaxing the rule still further by providing that every contract made on behalf of the company by any agent, officer or servant in general accordance with his powers as such under the by-laws (or otherwise—Manitoba) is binding on the company, and it is not necessary that the corporate seal be affixed to such contract. In the case of companies incorporated by registration it is only necessary to affix the corporate seal to the contract, if a seal would have been necessary in the case of an individual.

The above-mentioned statutory provisions relating to contracts appear in the different Acts as follows:—

Dominion (s. 32).

Manitoba (s. 66).

Nova Scotia (ss. 75, 77).

Saskatchewan (ss. 112, 113).

Alberta (ss. 95-97a)..

British Columbia (s. 127).

Notwithstanding the above statutory provisions, it is the practice to execute all important contracts under the corporate seal. Where a contract is so executed, the company is expressed to be one of the parties, and the final clause may read “ In witness whereof the company has caused its corporate seal to be hereunto affixed, attested by the hands of its proper officers.” The contract will be executed as follows:—

Impression of
corporate
seal.

by

_____, Limited

A. B.

President.

C. D.

Secretary.

In some jurisdictions, a contract made before the company becomes entitled to commence business is only provisional (see Commencement of Business, pp. 34 ff). A company will not be bound by a contract, made before it comes into existence, by some one purporting to act on its behalf. If a person makes a contract on behalf of a company before it comes into existence, he will be personally bound by the contract. He should, therefore, protect himself from liability by a proper clause in the contract. Such a clause should provide that, if the contract is adopted by the proposed company, the liability of the agent or trustee is automatically terminated; and that, if the contract is not adopted within a limited time, the trustee or agent may rescind the contract.

An officer or agent, who makes a contract on behalf of a company, incurs no personal liability to third parties, unless his authority is defective or non-existent, or he fails to make it clear that he signs as officer or agent only. If the company repudiates a contract entered into by an officer or agent without authority, the officer or agent will be liable to the other contracting party in damages for breach of implied warranty of authority. An unauthorized contract may be ratified by the board of directors, or by the shareholders, where their assent is required. Where a person makes a contract on behalf of a company, without authorization, he should protect himself from personal liability by having the contract expressed to be conditional on proper ratification being obtained. If this is not possible, he should have the contract ratified at the earliest opportunity.

Any contract, letter or document, not under the corporate seal, should be signed as follows:—

_____, Limited.
by _____,
(Official designation).

Special care should be taken in the case of bills of exchange, promissory notes and cheques, not only to sign on behalf of the company, but also to state the company's name accurately, followed by the word "Limited" (or its abbreviation, in jurisdictions where this is permitted). Otherwise the person signing such instruments may be personally liable. The by-laws or articles and the banking and signing officers' resolution will provide what officers may sign bills, notes, cheques, etc.

A draft by one company on another may be in the following form:—

\$1,000.

Toronto, January 2, 1921.

Three months after date, pay to the order of
one thousand dollars, value received.

For the A. B. C. Company, Limited.

A. X.
President.
B. Y.
Secretary.

To X. Y. Z. Company,
Limited.

The draft may be accepted as follows:—

For X. Y. Z. Company, Limited, and by its authority; payable at the _____ Bank, _____ and _____ Streets
Branch, Toronto.

L. M.
President.
N. O.
Secretary.

A draft should not be accepted unless it is directed to the company, e.g., where it is addressed to the directors.

A promissory note may be in the following form:
\$1,000.

Toronto, June 6, 1921.

Two months after date,
promises to pay to _____, Limited,
of one thousand dollars, value received. or order, the sum

For _____, Limited.

By _____

President.

Secretary.

Cheques may be signed in the same way.

In some jurisdictions a company may appoint an attorney, by writing under its corporate seal, authorizing the attorney to execute deeds on the company's behalf. See Dominion (s. 31); Ontario (s. 145a); Saskatchewan (s. 115); British Columbia (s. 129).

Officers.

Manager, general manager or managing director.

The by-laws or articles usually provide for the appointment of a manager, general manager or managing director with more or less wide powers over the administration of the company's affairs. The manager may or may not also be a director. He should be appointed by the board of directors, but it is usually desirable to have in addition an agreement under the corporate seal, setting out the terms of the appointment, the powers to be vested in the manager, the remuneration, the duration of, and the method of determining, the employment. It is

important that the agreement be so drawn that the directors may exercise control over the manager and, if need arises, dismiss him on reasonable notice or payment in lieu thereof. For form of agreement, see Forms pp. 309, 310. The extent of the manager's authority is governed primarily by the by-laws or articles or by the agreement under which he serves, but the company may become liable for his acts under certain circumstances notwithstanding he has exceeded his authority. (See Company Law, p. 140). The manager has no authority to call meetings of shareholders unless the by-laws or articles so provide. Where the manager is also a director, the by-laws or articles sometimes provide that he is to be called managing director.

President, Vice-president.

The by-laws or articles generally provide for a president and vice-president, who are usually appointed by the directors at their first meeting after the annual meeting at which directors are elected. Among the usual duties of the president are the following:—to preside at all meetings of the board; to act as chairman at, and call to order, meetings of shareholders; sign share certificates, deeds and other instruments in the name of the company; call meetings of the directors. The vice-president is usually authorized by the by-laws or articles to perform the duties of the president in the event of his absence or inability to act.

Secretary, Treasurer.

The by-laws or articles provide for the appointment of a secretary. This is done by resolution of the directors; a contract is not usual. The duties of

the secretary are usually indicated in a general way in the by-laws or articles. He will take minutes of the meetings of directors and shareholders and send out notices of meetings when so directed. He cannot call meetings of shareholders without authorization. He will have charge of the minute books of the company and of other books, such as the register of shareholders, the stock ledger, register of directors, etc. He will act under and obey the lawful orders of the board, but not of a single director, unless such director happens to be the manager or is otherwise properly authorized to give the instructions. It is usually part of the secretary's duties to certify copies of resolutions, etc., under the company's seal; also, register transfers of shares, except where this duty is delegated to a transfer agent and registrar. But he cannot pass transfers of shares not fully paid up. He is usually by the by-laws or articles designated as one of the signing officers to sign with the president or vice-president, deeds, share certificates, etc. The secretary should be familiar with the governing Companies Act, and by-laws or articles; he should see that the necessary annual and other returns are filed with the proper departments. As a general rule the secretary has no inherent power to bind the company by contract, although the company may become liable on the principles of the law of agency on contracts made by the secretary on its behalf. The secretary, being a servant or agent of the company, is liable if he accepts any bribe or secret commission from persons having dealings with the company. The various Companies Acts also impose penalties on the secretary for various infractions of their provisions, e.g., failure to file the annual summary, falsifying books,

etc. A company will not be bound by a share certificate or cheque on which the secretary has forged the names of the directors.

The by-laws or articles will provide for the appointment of a treasurer and define his duties. The appointment is made by the directors. The treasurer's duties include the custody of the funds and securities of the company, depositing the same in the company's bank, signing cheques, drafts, etc. The signing authority of the treasurer as regards the company's banking arrangements will be found in the banking and signing officers' resolution (see pp. 183, 184). The offices of secretary and treasurer are often combined, the officer being then called the secretary-treasurer.

Auditors.

The Acts of the Dominion and of Ontario and most of the other provinces provide for the appointment of auditors and their powers, duties and remuneration. The statutory provisions vary in their details, but most of them include the following: The first auditors may be appointed by the directors; but thereafter must be appointed at the annual meeting. If this is not done, the departmental official designated by the Act may, on the application of any shareholder, appoint an auditor for the current year and fix his remuneration. Directors or officers are not eligible. The directors may fill any casual vacancy in the office of auditor. The remuneration of the auditors must be fixed by the shareholders in general meeting, except the remuneration of the first auditors, or auditor appointed to fill a casual vacancy, which may be fixed by the directors. Every auditor has a right of access

to the company's books, accounts and vouchers, and is entitled to require from the directors and officers such information and explanation as may be necessary for the performance of his duties. The auditors must make a report to the shareholders on the accounts examined by them and on every balance sheet laid before the company in general meeting, and the report must cover the particulars required by the governing Act, which include whether the balance sheet is properly drawn up. The directors and auditors should, of course, satisfy themselves that the provisions of the governing Act in respect of audit and balance sheets have been complied with. The report must be read at the annual meeting. Under the Dominion, Quebec, Saskatchewan and British Columbia Acts the balance sheet must be signed by two directors. The auditors' statement or certificate must be in accordance with the Act which governs the company's affairs. The following form is sufficient under the Ontario Act:

We have examined the books and accounts of

Limited, for the year ending December 31, 1920, and, in accordance with section 134(2) of the Ontario Companies Act, we certify that all our requirements as auditors have been complied with, and report that, in our opinion, the above balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the corporation's affairs at December 31, 1920, as shown by its books.

The following form is sufficient under the Dominion Act:—

We have examined the accounts of

Limited, for the year ending December 31, 1920, and report that, in our opinion, the above balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs at December

31, 1920, according to the best of our information and the explanations given to us and as shown by the books of the company. We have obtained all the information and explanations we have required.

Frequently it is necessary to add special remarks as e.g., "inventories have been certified as to quantities by the company's officials," or "provision has been made in respect of doubtful accounts and bills receivable," or "no allowance has been made for Dominion income tax." Sometimes the report is expressed to be subject to an accompanying letter.

As to the duties of auditors, see *Company Law*, p. 539.

The statutory provisions as to auditors and balance sheets appear in the various Acts as follows:

Dominion (ss. 94 A-C; s. 105).

Ontario (ss. 127-134; s. 45 (3)).

Quebec (arts. 6030 c-d).

Nova Scotia (s. 94).

Saskatchewan (ss. 127-128).

Alberta (ss. 131-133).

British Columbia (ss. 109-115).

CHAPTER XIII.

HEAD OFFICE.

Every company must have an office, designated in the various jurisdictions as the head office, chief place of business, registered office, etc. At such office process and notices may be served on the company; and there certain books and documents must be kept, the requirements in this regard varying in the different jurisdictions. The location of the head office may be a matter of some importance as regards municipal taxation, such as business tax and income tax. For this reason it is often desirable, where the circumstances permit it, e.g., in the case of a mining company whose mining operations are carried on in a municipality where such taxation is light, to avoid locating the head office in a large city where such taxes are heavy. If necessary, the place of the head office may be changed.

In the case of companies incorporated by letters patent, the application for incorporation must state the place (i.e., the city, town, etc.) where the head office will be situate, and such place will be mentioned in the letters patent. In the case of companies incorporated by registration, the place where the registered office will be situated must be stated in the memorandum.

A company may have more than one office. It is not necessary or desirable to designate the exact address of the head office. The by-laws or articles should provide that this may be changed from one

address to another in the city, town, etc., where the head office is situated.

The following is a brief summary of the statutory provisions:—

Dominion.

The application must state the place in Canada which is to be the chief place of business (s. 7(c)), which is the legal domicile of the company in Canada. Notice of the situation and of any change therein must be published in the Canada Gazette (s. 30(2)). Service of process upon the company at the chief place of business (s. 95); books to be kept there (s. 91); register of mortgages to be kept there (s. 69H); copies of instruments creating mortgages or charges to be kept there (s. 69A (9)); name to be kept painted or affixed on the outside of every office or place of business in which the business of the company is carried on in letters easily legible and in a conspicuous position (s. 33); duplicate of annual summary to be kept there (s. 106(4)).

Ontario.

The application must state the place in Ontario where the head office is to be situated (s. 5 (2) (c)). All meetings must be held at such place unless the letters patent or by-laws otherwise provide (s. 52). Notice of change of location of the head office must be published (s. 90(3)). Books must be kept at head office (s. 119). Duplicate of annual summary to be kept posted up at head office (s. 135 (2)).

Quebec.

The petition for incorporation must state the place within the province where the head office is to

be situated (art. 5962). The head office is the legal domicile; notice of the situation of the office and of any change therein must be published in the Quebec Official Gazette in Form K to the Act (art. 5976). Certain books, including a register of mortgages, must be kept at the head office (arts. 6025-6026). Duplicate of annual summary to be retained at head office (art. 6031 (4)).

Manitoba.

The application for incorporation must state the place within the province which is to be the chief place of business (s. 5(c)). The name, including the word "Limited" or the contraction "Ltd.," must be kept painted or affixed in letters easily legible in a conspicuous position on the outside of every office (s. 23 (3)). Books to be kept at head office (s. 62). Duplicate of annual summary to be kept posted up at head office (s. 85).

New Brunswick.

The application for incorporation must state the place within the province which is to be the chief place of business (s. 7 (c)). The company must at all times have an office in the locality in which its chief place of business shall be, which is to be the legal domicile of the company in New Brunswick, and notice of the selection of that office and any change therein is to be advertised in the New Brunswick Royal Gazette (s. 35 (1)). Books and the corporate seal must be kept at the head office (ss. 97-99; 35 (5)). Any summons, notice, etc., may be served at the office where the chief place of business is situate (s. 106).

Nova Scotia.

Saskatchewan.

Alberta.

British Columbia.

The memorandum must state the place within the province (except Nova Scotia) where the registered office of the company will be situated. In British Columbia the city, town or county must be stated. The company must have a registered office in the province to which notices, etc., may be addressed. Notice of the situation of the registered office and of any change therein must be given to the registrar. In British Columbia notice of the situation must be delivered to the registrar with the memorandum of association. The name must be kept painted or affixed in a conspicuous position on the outside of every office in letters easily legible. A register of members and of directors must be kept at the registered office. In Alberta and British Columbia copies of mortgages, a register of mortgages, and in Nova Scotia, Alberta and British Columbia a register of debenture holders must be kept at the registered office.

See the following statutory provisions:—

Nova Scotia (ss. 34, 60-62, 74, 88, 116).

Saskatchewan (s. 6 (b); ss. 71, 72; ss. 109, 118).

Alberta (s. 7 (c); ss. 99-102, 104, 105, 114).

British Columbia (s. 19 (b); ss. 81, 82, 87, 97, 261).

Change of head office.

Dominion (s. 76).

Quebec (arts. 6016, 6091).

The change is effected by by-law. This is not to be valid or acted upon, unless it is approved by a vote of at least two-thirds in value of the shares

represented by the shareholders present at a special general meeting duly called for considering the by-law; nor until a copy of the by-law, certified under the seal of the company, has been deposited in the Department of the Secretary of State, or the Provincial Secretary (as the case may be) and published in the Canada Gazette or Quebec Official Gazette (as the case may be). The notice of meeting must specify the business.

For form of by-law see App. Form 32.

The Quebec Act contains a proviso that the head office must be within the province. As to the declaration to be filed with the prothonotary see p. 24, above.

Ontario (s. 90).

The change is effected by by-law. The by-law does not take effect until confirmed by a vote of shareholders present or represented by proxy at a meeting duly called for considering the by-law and holding not less than two-thirds of the issued capital stock represented at the meeting. The notice of meeting must specify the business. A copy of the by-law certified under the seal of the company must be filed forthwith in the office of the Provincial Secretary and published in the Ontario Gazette. A copy of the by-law must also be published twice in a newspaper published in the place where the head office was located and twice in a newspaper published in the place to which the head office is to be removed or as near thereto as may be. The head office must be located in Ontario. For form of by-law see App. Form 32.

Manitoba (s. 29A).

If any change takes place in the business address

of the company, notice of such change must be sent to the Provincial Secretary within thirty days.

New Brunswick (ss. 35, 85 (2)).

The change is made by by-law, which is not to be valid or acted upon, unless approved by a vote of at least two-thirds in value of the shares represented at an annual meeting or at a special general meeting duly called for considering the by-law; nor until a copy of the by-law, certified under the seal of the company, has been deposited in the office of the Provincial Secretary-Treasurer and approved of by him. Notice of any change in the head office must be advertised in the Royal Gazette.

Nova Scotia (s. 60).

Saskatchewan (s. 71).

Alberta (s. 100).

British Columbia (s. 81).

The change is made by resolution of the directors. Notice of any change in the situation of the registered office must be given to the registrar to be recorded by him. The notice should state the full address.

The British Columbia form of notice is Form 10 in the schedule to the Act and reads as follows:—

“Companies Act, 1921.”

Notice of Change in Registered Office.

Notice is hereby given that the situation of the registered office of the _____, Limited, has been changed to _____, in _____, Province of British Columbia.

Dated this _____ day of _____, 19 ____.

(Signature)

(Relationship to Company)

The above form may be adapted for use in the other provinces.

CHAPTER XIV.

BOOKS AND CORPORATE SEAL.

The requirements as to what books must be kept are different according as to whether the company is incorporated by letters patent or by registration. In the case of companies incorporated by letters patent these requirements appear in the different Acts as follows:—

Dominion (ss. 89-91; 69A, 69H, 69I, 69J).

Ontario (ss. 118, 124).

Quebec (ss. 6025-6029).

Manitoba (ss. 59, 62-65).

New Brunswick (ss. 97-101).

Statutory books.

A book or books must be kept by the secretary or some other officer specially charged with that duty in which there are recorded:—

(a) A copy of the letters patent, any supplementary letters patent (Manitoba—increasing or decreasing the capital), and all by-laws (and Dominion—also a copy of the preliminary memorandum of agreement).

(b) The names alphabetically arranged of present and past shareholders.

(c) The address and calling of every such person while a shareholder.

(d) The number of shares held by each shareholder.

(e) The amounts paid in and remaining unpaid, respectively, on the shares of each shareholder.

(f) The names, addresses and calling of present and past directors, with the date at which each became or ceased to be a director.

(g) The date and other particulars of transfers of shares (except in Dominion and Quebec).

Under the Dominion, Quebec and New Brunswick Acts a register of transfers must also be kept in which must be entered the particulars of every transfer of shares.

A loose leaf book may be obtained from any law stationer in which the above particulars may be entered. In the case of companies with a large number of shareholders, a share ledger, which shows the share account of each shareholder; a register of transfers (where required); and a register of directors, containing also a copy of the letters patent, supplementary letters patent and by-laws, will be kept in separate books. Such books may also be obtained from any law stationer.

These books must be kept at the head office. Where the company has a registrar and transfer agent, the latter will keep the share ledger and register of transfers (if any). In addition, the company, or its registrar and transfer agent, will keep one or more share certificate books. There will also be a minute book, or separate minute books, for directors' and shareholders' meetings. A director, in virtue of his office, has the right at any time to see the documents of the company. Where the company has created an issue of bonds, the bond register will be kept by the trustee under the bond mortgage. The corporate books of account will be similar to those used by individuals in the same line of business. It is usually worth while to have the books of

account opened by a competent firm of chartered accountants.

Additional provisions are in force in some jurisdictions as follows:—

Dominion.

The company must keep a register of mortgages (s. 69H). See p. 192.

Quebec.

The company must keep a register of mortgages (art. 6025a).

Ontario.

The company must keep specified books of account. The keeping of a book or books containing minutes of all the proceedings and votes of the company, or of the board of directors, is compulsory (s. 124).

If the company is entitled by its letters patent or supplementary letters patent to hold its meetings out of Ontario, it may be relieved from the requirement that its books must be kept at the head office in Ontario (s. 119). For documents required to obtain such permission see Forms, p. 193. A departmental pamphlet is obtainable gratis from the Provincial Secretary showing the procedure.

The books required to be kept by the different Acts must be kept open at the head office for inspection of shareholders and creditors. The Ontario Act does not, however, provide that the additional books required by s. 124 shall be open to such inspection. The by-laws usually restrict the right of inspection by shareholders, except to the extent conferred by the governing Act, on the ground that it is

undesirable to disclose the company's affairs to the public.

In the case of companies incorporated by registration the requirements as to books appear in the different Acts as follows:

Nova Scotia (ss. 30, 34-37, 71, 74, 88; Tab. A 143-145).

Saskatchewan (ss. 36, 47, 48, 93, 109; Tab. A 73, 101).

Alberta (ss. 27, 37-42, 103-105; Tab. A. 78).

Register of members.

The company must keep, at the registered office, a register of members, which must show:—

(a) The names, addresses and occupations (if any) of the members.

(b) A statement of the number of shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member.

(c) The date at which each person was entered in the register as a member.

(d) The date at which any person ceased to be a member.

Inspection, rectification, etc., of register.

The above Acts contain substantially the following provisions, which are those of the Saskatchewan Act:—

42. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of twenty-

five cents, or such less sum as the company may prescribe for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the form of return required by this Act, or any part thereof, on payment of ten cents, or such less sum as the company may prescribe for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding \$10, and to a further fine not exceeding \$10 for every day during which the refusal continues, and every director and manager of the company who knowingly authorizes or permits the refusal shall be liable, on summary conviction, to a like penalty, and any Judge may by order compel an immediate inspection of the register.

44. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

45. If:

- (a) The name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
- (b) Default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member;

the person aggrieved, or any member of the company, or the company may apply to the Court for rectification of the register.

(2) The application may be made to a judge sitting in chambers, and the Court may either refuse the application or may order rectification of the register, and payment by the company of any damages sustained by any party aggrieved.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register.

47. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

48. Whenever any order has been made rectifying the register in the case of a company hereby required to send a list of its

members to the registrar, the Court shall by its order direct the due notice of such rectification to be given to the registrar.

Register of directors.

A register of directors must be kept at the registered office, containing the names, addresses and occupations of the directors and managers. A copy must be sent to the registrar. The company must, from time to time, notify the registrar of any change in the directors and managers. A penalty is imposed for default.

Inspection of books.

The right of inspection of books by members (except the register of members, and—Alberta—register of mortgages) will depend on the articles, if any, which usually restrict the right. Table A in Alberta gives a right of inspection of books of account during business hours, subject to reasonable restrictions as to time and manner imposed by the company in general meeting. Table A in Nova Scotia and in Saskatchewan provides that members who are not also directors shall have no right of inspecting any account, book or document, except as conferred by statute or authorized by the directors or by the company in general meeting.

Additional books.

The company will also keep a share ledger, register of transfers, one or more share certificate books, minute books and books of account. As to all these see p. 218, above.

In Alberta, a register of mortgages and charges must be kept at the registered office, and is open to inspection by creditors and members (see p. 198, above).

In Nova Scotia, a register of debenture holders must be kept at the registered office, and is to be prima facie evidence of any matters inserted, if authorized or directed by the Act to be inserted. A branch register of debenture holders and a branch register of members may also be kept. Minute books of meetings of shareholders and directors must be kept.

British Columbia (ss. 66-72, 87-88, 97-99, 112, 121; Tab. A 92).

The company is required to keep a register of members. For particulars required to be inserted, see s. 66. The register is to be kept at the registered office. There is a right of inspection and obtaining copies. A branch register of members resident outside of the province may be kept anywhere. A register of directors and managers must be kept at the registered office. There is a right of inspection and obtaining copies. A register of mortgages and a register of registered debenture holders must be kept at the registered office (see p. 199, above). Books of account must be kept at the registered office, or at such other place or places as the directors think fit. The books of account are open to the inspection of the directors at all times. Subject to any regulations in the articles, the directors may determine whether and to what extent and at what times, places and under what conditions or regulations the accounts are to be open to inspection of members who are not directors. No member who is not a director is to have any right of inspection of any account, book or document of the company, except as conferred by law or authorized by the directors or by the company in general meeting. Minutes of

shareholders' and directors' meetings must be kept. The minute book or duplicates must be kept at the registered office or in the possession of a director, manager or officer of the company resident in the province.

The corporate seal.

Every company has a corporate seal or common seal, on which the name of the company with the word "Limited" after it must be engraved in legible characters.

In Ontario every private company must have on its seal the words "Private Company" (s. 35).

In some jurisdictions, which provide for the incorporation of mining companies, which may issue their shares at a discount, or without personal liability of shareholders, such companies must have engraved on their seal the words "No Personal Liability" (Ontario, Quebec, Manitoba), or "Non-personal Liability" (Saskatchewan, Alberta).

The seal is made of metal and is fitted with a lever for impressing documents. The seal is impressed on share certificates, bonds, debentures, debenture stock certificates, trust deeds, contracts, mortgages, copies of documents certified by an officer of the company, and other important documents. The by-laws or articles will designate the officers who will sign documents under the corporate seal and in whose presence the seal will be affixed. Usually these officers will be the president or vice-president and the secretary or treasurer. If the letters patent or articles contain special provisions, e.g., that the seal must be affixed by specified officers, a person dealing with the company must see that the document apparently conforms to such provisions. If

the document has been apparently regularly sealed, there is a presumption of regularity. As by-laws, on the other hand, are not public documents (except, possibly, in Manitoba) a person, in the absence of knowledge to the contrary, may generally assume that the seal has been regularly affixed. If, however, the document is a forgery, the company will not be bound, though the document is on the face of it regular.

Official seal.

Ontario (s. 145b).

Nova Scotia (s. 78).

British Columbia (s. 130).

Provision is made for the use outside the province of an official seal, which is a facsimile of the common seal, with the addition on its face of the name of every territory, district or place (British Columbia—every province, state or country) where it is to be used. A company having such an official seal may, by writing under its common seal, authorize any person appointed for the purpose to affix the official seal to deeds or other documents. The person affixing the official seal must, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

Duplicate seal.

New Brunswick (s. 35 (5)).

A duplicate seal or seals of the company may be authorized by by-law to be kept and used elsewhere than at the head office.

CHAPTER XV.

DIVIDENDS.

Dominion (ss. 7B, 68A, 70, 71, 89 (b), 82).

Ontario (ss. 59, 63, 91 (b), 95, 96).

Quebec (arts. 5967a (7), 6010, 6010a, 6011, 6020 (2) (b), 6021).

Manitoba (ss. 32, 34).

New Brunswick (ss. 75 (1), 76 (1), 78, 79-81, 90 (b), 92, 128).

Nova Scotia (ss. 34 (4), 38-40, 84; Tab. A 129-142).

Saskatchewan (ss. 44, 51, 106; Tab. A 93-100).

Alberta (ss. 38, 52, 69 (3); Tab. A 72-77).

British Columbia (ss. 70, 79 (c), 80 (1), 107; Tab. A 84-91).

The by-laws or articles generally empower the directors to declare dividends. Articles of companies incorporated by registration sometimes authorize the declaration of dividends by the company in general meeting, or by the directors with the sanction of a general meeting. The latter provision is found in Table A. Any special regulations as to dividends in the governing Act, charter, by-laws or articles must be observed. For example, such regulations may require the setting aside of a reserve fund before dividends may be declared. All the Acts, except British Columbia and Nova Scotia, expressly forbid dividends which will impair the capital of the company, or which will render the company insolvent. Dividends are only payable out of profits or surplus and must not be paid out of capital. Most of the Acts expressly make the direc-

tors personally liable for declaring and paying dividends while the company is insolvent or which render the company insolvent. Apart from statute, directors who pay a dividend out of capital are bound to make it good personally on being sued by the company. If the company is put in liquidation, they may also be proceeded against for misfeasance for improperly paying dividends.

As to dividends on shares of no par value, see p. 95, above.

In Nova Scotia (s. 84), British Columbia (s. 107), interest may be paid on share capital in certain cases.

Before the declaration of a dividend, the directors will usually call upon the treasurer or auditor to furnish them with a statement showing the amount of profits available for dividend, unless the company's earnings are obviously sufficient to justify the dividend contemplated. The directors are not bound to examine into the correctness of statements put before them by the company's officials. They will usually be protected in relying on the accuracy of such statements, unless there is ground for suspicion. Care should be taken, in estimating the amount of profits available for dividend, that provision is made for the payment of Dominion income tax, as well as any other tax, fixed charges, depreciation, etc.

In the case of a company formed to work a property of a wasting nature, e.g., a mine, gas or oil well, there is some doubt whether, under most of the Acts, the directors can safely authorize the payment of dividends without setting aside a fund to provide against the exhaustion of the property. The company must, in any event, retain assets sufficient to

pay its creditors. Where dividends are paid without making provision for exhaustion, it is prudent to draw the attention of the shareholders to that fact. After the company's assets have become depreciated or exhausted by reason of distribution of dividends, it may further be advisable to reduce the share capital by the amount that is no longer represented by available assets (see p. 241). The difficulty is covered in Ontario, where a company whose assets are of a wasting character may pay dividends out of the funds derived from its operations, but a by-law must be passed by the directors and confirmed by a two-thirds majority of the shareholders (s. 95).

Difficult questions occasionally arise as to whether a dividend is properly payable where a portion of the company's capital has been lost. Competent legal advice is desirable in such cases. See further Company Law, pp. 422-429.

The propriety of declaring a dividend (if any) and its amount, in the absence of special regulations, will be a matter for the discretion of the directors. If the directors do not act illegally or fraudulently or in bad faith their discretion will not be interfered with by the courts. They must, of course, as between shareholders of any one class, treat each shareholder equally. The rights of preference shareholders, if any, will have to be observed. These will be governed by the terms of the by-law or other provision under which the preference shares have been issued.

Procedure.

Dividends will be declared by resolution of the board of directors, or by resolution of the share-

holders, where the articles so provide. The resolution may be as follows:—

That a dividend of \$6 per share upon the shares of the company issued and outstanding be declared in favor of shareholders of record at the close of business on the 1st day of June, 1921, payable on and after the 10th day of June, 1921.

Or

That the half yearly dividend of 4 per cent. upon the outstanding preference shares of the company be and the same is hereby declared, said dividend to be payable on the 10th day of April, 1921, to shareholders of record on the first day of April, 1921, at 3 p.m., and that the Treasurer of the company be and he is hereby authorized and instructed to give due notice of such dividend and to pay the same when due.

Notice of the declaration of the dividend will be given to the shareholders if the company's regulations require it; and, even where such notice is not required, companies often find it desirable to publish a dividend notice in the newspapers and financial papers. The following is a common form of such notice:—

.....Limited.

Notice is hereby given that a dividend of \$2 per share for the quarter ending April 30, 1921, has been declared upon the preference shares of the company, payable on May 2, 1921, to shareholders of record Friday, April 15, 1921. The books of the company for the transfer of preference shares will be closed at 3 p.m., April 15, and will be reopened April 22, 1922.

A. B.,

Secretary.

The proper officer of the company will make the necessary arrangements for preparing an accurate list of the shareholders of record on the date specified in the resolution. If there is a registrar and transfer agent a certified list will be furnished by it. The list will show the amount of shares held by each shareholder. For convenience in preparing such a list, the directors may close the transfer books or

close the register of shareholders for a limited period, if the governing Act or regulations permit.

In Ontario the directors may direct that no entry of transfers is to be made in the books of the company for two weeks immediately preceding the payment of a dividend, and payment thereof is to be made to the shareholders of record on the date of closing of such books (s. 59).

In New Brunswick the company may, pursuant to any by-law, close its transfer book for five days previous to the declaration of any dividend not exceeding four times in any one year (s. 75 (1)).

In Nova Scotia, Saskatchewan, Alberta and British Columbia the company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

After a correct list of shareholders with the amount of shares held by each has been prepared, the treasurer will make up a dividend statement and will see that the dividend cheques are mailed at the proper time. It is desirable that the cheques should have stamped thereon some identifying words, such as "Dividend No. .". The cheques may then be accompanied by a notice that no receipt is required, the endorsement of the cheques taking the place of a formal receipt. The cheques will be made out in the name of shareholders of record. If the company receives notice of a claim for payment of dividend on shares not registered in the claimant's name, payment should be withheld and the matter referred to the company's solicitors for adjustment. In the absence of provision to the contrary in the by-laws, articles or conditions of issue, dividends

are payable rateably on the number of shares held, irrespective of the amount paid up on the shares. This rule works out unfairly where some shareholders have paid up more than others on their shares. For this reason the by-laws or articles sometimes provide that the company's profits are to be divisible among the shareholders "in proportion to the capital from time to time paid up on the shares held by them respectively." With such a provision each shareholder gets his dividend upon the amount he has invested.

Mode of payment.

Dividends are usually payable in cash and must be so paid in the absence of express authority to the contrary, unless the shareholders all agree to take payment in some other form than cash.

It is not always convenient or desirable to pay dividends in cash. The company's profits may have been put back into the business, or the profits may be in the form of property. While the directors might secure funds to pay a cash dividend by borrowing money or realizing upon the property or issuing bonds against it, they may not desire to do so. On the other hand, there may be sufficient cash available to pay a dividend, but the cash is required for the company's financial needs. In any of such cases the payment of a dividend otherwise than in cash is indicated.

If authorized to do so by the governing Act, letters patent or articles of association, the company may declare a dividend payable in capital stock of the company; and for that purpose may issue shares of the company as fully or partly paid up of an equal but not greater par value than the amount of

the dividend. If the company has no unissued capital stock available for such a dividend, it can increase its capital (see pp. 239 and 249). In the case of companies incorporated by registration, a provision is frequently introduced in the articles permitting dividends to be paid in shares or securities (including bonds) of the company. In Ontario, the declaration of a stock dividend, to become effective, must be confirmed by a vote of shareholders present or represented by proxy, at a general meeting duly called for considering the same and holding not less than two-thirds of the issued capital stock represented at such meeting (s. 96).

Under the Dominion Act, power to pay stock dividends may be taken under letters patent.

In Quebec a stock dividend may be declared by the directors. No confirmation by the shareholders is required (art. 6010a).

In jurisdictions where there is no provision for stock dividends the same result can be accomplished, if all the shareholders agree, by declaring a dividend payable in cash; having the shareholders subscribe for shares to the amount of the dividend; making a call of one hundred per cent. on the shares so subscribed; and by setting off the dividend against the call.

Reserve fund.

The directors of a company, in the absence of provision to the contrary in the governing regulations, and subject to the control of the shareholders, are entitled to maintain a rest or reserve fund and are not bound to distribute the whole of the profits among the shareholders. The by-laws or articles frequently contain provisions as to the maintenance,

investment, etc., of the reserve fund; in which case such provisions must be observed. An adequate reserve fund is desirable for meeting financial emergencies; equalizing dividends, where the company's profits are liable to fluctuation; repairing, improving and maintaining the company's property; replacing wasting assets, etc. The maintenance of an excessive reserve fund may prevent shareholders from receiving any dividends. A majority of the shareholders can, of course, turn out the board and put in a board of directors who will meet their wishes in regard to the distribution of profits by way of dividends. It is very difficult for a minority, on the other hand, to prevent the directors from maintaining a reserve fund which the minority may consider excessive (see Company Law, p. 435). In the case of companies incorporated by letters patent such difficulties can be guarded against by appropriate provisions in the letters patent.

Dominion income tax.

As to dividends paid by corporations subject to taxation under the Dominion Income War Tax Act, shareholders are not liable to normal tax, but are liable to surtax (s. 3(1)(d)). Section 2(1) declares that dividends shall include stock dividends. In order to arrive at the taxable value of a stock dividend, the total amount distributed as a stock dividend should be divided by the number of shares issued. The amount so ascertained, multiplied by the number of shares received by any particular shareholder, gives the amount which should be included as income in his return. Dividends are taxable income in the year in which they are paid or distributed.

Distribution of assets in specie.

Sometimes a company may find it desirable to distribute in kind property or assets of the company, in particular shares or securities of another company belonging to the distributing company. This requires express authority.

A provision authorizing such distribution is commonly introduced in the letters patent, or in the articles of a company incorporated by registration.

The following Acts contain special provisions:—

Ontario.

15.—(1) Where a corporation has ceased to carry on business except for the purpose of winding up its affairs and has no debts or obligations that have not been provided for or protected, the directors may pass by-laws for distributing the assets of the corporation or any part of them among the shareholders. And in any case where the corporation has issued both preference and common shares, such by-laws may provide for distributing any part of the assets, in specie or otherwise, rateably among the holders of preference shares, and the remainder of such assets rateably among the holders of common shares.

(2) The by-law shall not take effect unless or until it is confirmed by a two-thirds vote of the shareholders present in person or by proxy at a general meeting duly called for considering the same and by the Lieutenant-Governor in Council. 2 Geo. V., c. 31, s. 15.

(3) When so confirmed any such by-law shall be valid and binding upon all shareholders of the corporation.

The following material is required:

(1) A formal petition addressed to His Honour the Lieutenant-Governor in Council signed by the executive officers of the corporation and passed under its common seal. Such petition should set forth all material facts, such as name, etc., etc.

(2) An affidavit by President and Secretary of the company verifying the facts contained in the petition.

(3) A declaration proving that such by-law has been lawfully passed by the directors and confirmed by a two-thirds vote of the shareholders present in person or by proxy at a meeting duly called for considering the same. Such declaration should produce

and verify (in addition to the certified copy of the by-law on file in this Department):

- (a) A copy of the proceedings at the meeting of shareholders with respect to the passage and sanction of the by-law:
- (b) Extract from the general by-laws of the company as to the calling of meeting of shareholders; and
- (c) Copy of notice of meeting mailed to the shareholders;
- (4) There should also be evidence, in the form of affidavit or statutory declaration, that the company has not any debts or obligations, or that the same have been duly provided for or protected, and if there are any, that creditors consent.

The departmental fee is \$10.

Quebec.

6020a. When a company has ceased to carry on business, except for the purpose of winding up its affairs, and has no debts or obligations that have not been provided for or protected, the directors may pass by-laws for distributing the assets of the corporation, or any part of them, among the shareholders. No such distribution shall be made until fifteen days after the publication of a summary of the by-law in the Quebec Official Gazette.

Nova Scotia (s. 17 (1) (g)).

See alteration of memorandum of association, p. 248, below.

CHAPTER XVI.

SUPPLEMENTARY LETTERS PATENT AND
ALTERATION OF MEMORANDUM
OF ASSOCIATION.

Dominion (ss. 22, 34, 37, 43C (4), 51 (3), 52, 54-54F, 7B).

Ontario (ss. 14, 16, 80 (2)).

Quebec (arts. 5969, 5978-5981, 5992-5997, 5967, 5967a).

Manitoba (ss. 19, 37-41, 43, 44, 75).

New Brunswick (ss. 30, 39-42, 55 (2), 57-63, 127, 129).

Supplementary letters patent.**Procedure.**

Companies incorporated by letters patent under the above Acts may obtain supplementary letters patent in certain cases. The procedure necessary for such purpose is, briefly,

(a) The passing of a by-law by the directors and confirmation by a specified majority of the shareholders; or, in certain cases, the passing of a resolution by a specified proportion of the shareholders without prior action by the directors; or, in the case of change of the company's name, the passing of a simple resolution of the shareholders, without any requirement as to majority; and

(b) The filing of a petition for supplementary letters patent with the department, accompanied by payment of the required departmental fee.

The more important cases in which supplementary letters patent are required are the following:—

Change of name.

When a company desires to change its name a resolution may be passed by the shareholders authorizing the change and the filing of a petition for supplementary letters patent.

In Ontario a by-law must be passed and confirmed. The change is made by order and not by supplementary letters patent (s. 40).

See further, Change of name (p. 253).

Amendment of letters patent.

Dominion (s. 34).

Quebec (arts. 5978-5981).

Manitoba (s. 19).

New Brunswick (ss. 39-42).

Supplementary letters patent may be issued extending, reducing, limiting, amending or varying the powers of the company, or any provisions of the letters patent or supplementary letters patent. A resolution must be passed by the votes of shareholders representing at least two-thirds in value of the subscribed capital stock of the company. The resolution must be passed at a special general meeting called for the purpose. The resolution must authorize the directors to apply for supplementary letters patent and must define the extension, variation, etc., of the powers to be applied for.

The Manitoba section (19) is more elaborate than the corresponding section in the other Acts, in particular providing for further matters in respect of which application may be made, and requiring the publication of a notice in the Manitoba Gazette one month before the application is made.

Ontario (s. 16).

Supplementary letters patent may be issued providing for (inter alia) limiting or extending the powers of the company; limiting or increasing the amount which the corporation may borrow upon debentures or otherwise, where such amount is specified in the letters patent or supplementary letters patent; varying any provision contained in the letters patent or supplementary letters patent.

The directors must pass a by-law authorizing an application to the Lieutenant-Governor for the issue of supplementary letters patent. The application is not to be made until the by-law has been confirmed by a vote of the shareholders present or represented by proxy at a general meeting duly called for considering the by-law, and holding not less than two-thirds of the issued capital stock represented at the meeting.

Subdivision of shares.

Dominion (ss. 51 (3), 52, 55).

Quebec (arts. 5992 (1), 5995, 5996).

Manitoba (ss. 37, 41, 43).

New Brunswick (ss. 57 (3), 58 (2), 61).

Sometimes it becomes desirable to subdivide the shares of the company into shares of a smaller par value. If, e.g., the market value of \$100 shares has become very high, dealings in the shares will be facilitated if they are split up into, say, shares of \$5 each.

A by-law must be passed by the directors and confirmed by the votes of shareholders representing at least two-thirds in value of the subscribed stock of the company at a special general meeting of the company duly called for considering the by-law.

Application must be made within six months after such approval for supplementary letters patent to confirm the by-law.

Ontario (s. 16).

The requirements are similar in Ontario, except that a vote of two-thirds of the issued capital stock represented at the meeting is required and there is no time limit within which the petition for supplementary letters patent must be presented.

Consolidation of shares.

A company may find it desirable to consolidate its shares into shares of a larger par value. No supplementary letters patent are required under the Dominion, Manitoba or New Brunswick Acts. In Ontario and Quebec the same requirements are imposed as in the case of subdivision of shares (see above).

Under the Dominion, Quebec and New Brunswick Acts the right to consolidate shares is only given where the par value of the shares is less than \$100 and the shares, as consolidated, must not exceed in par value \$100 each.

Increase of capital.

Dominion (ss. 52, 53, 55).

Quebec (arts. 5993, 5995, 5996).

Manitoba (ss. 38, 39, 41, 43).

New Brunswick (ss. 58, 59, 61, 129).

Under the Acts of the Dominion and Quebec it is a condition precedent for the increase of capital that 90 per cent. of the authorized capital has been subscribed and 50 per cent. paid thereon.

In Manitoba the whole of the capital stock must have been taken up and 30 per cent. paid thereon.

In New Brunswick there is no requirement as to the amount of capital to be subscribed and paid up.

A by-law must be passed by the directors and approved by the votes of shareholders representing at least two-thirds in value of the subscribed stock of the company at a special general meeting duly called for considering the by-law. The by-law must declare the number of shares of the new stock and may prescribe the manner in which the same shall be allotted. Otherwise the control of the allotment is to vest absolutely in the directors.

Application for supplementary letters patent to confirm the by-law must be made within six months after such approval by the shareholders.

Ontario (s. 16).

It is a condition precedent for the increase of capital that 90 per cent. of the authorized capital has been subscribed and 50 per cent. paid thereon. A by-law must be passed by the directors and confirmed by a vote of shareholders present or represented by proxy at a general meeting duly called for considering the by-law and holding not less than two-thirds of the issued capital stock represented at the meeting. Application may then be made to the Lieutenant-Governor for the issuance of supplementary letters patent.

Decrease of capital.

A reduction of the capital stock of a company may take place in various ways, of which the following are examples:—

1. By cancelling or reducing the liability of shareholders in respect of unpaid capital. For example, shares having a par value of \$100 each have

been subscribed for and issued to shareholders. The sum of \$50 has been paid up on each share and there remains a liability of \$50, which can be called up at any time by the directors. If the shares are reduced to fully paid shares of \$50 each, this liability is extinguished. If the shares are reduced to \$75 shares with \$50 paid, the liability is reduced to \$25.

2. By paying off or returning paid-up capital not required for the purposes of the company.

3. By cancelling authorized capital which has not been issued.

4. By cancelling issued capital which has been lost or is unrepresented by available assets.

The latter mode is the one which is adopted for the purpose of enabling a company to pay dividends after a loss or depreciation of capital has occurred. Thus 1,000 fully paid shares of \$100 each are outstanding, but by reason of reverses one-half of the company's capital has been lost and the shares are only worth \$50 each. The company can cancel \$50 per share, thereby reducing its capital to \$50,000 upon which it can pay dividends, if earned. To meet such a situation it is often preferable to effect a sale of the company's assets to a new corporation with smaller capitalization, in consideration of all the shares of the new corporation issued as fully paid. Such shares of the new corporation can then be distributed among the shareholders of the old company which then surrenders its charter or is wound up.

Manitoba (s. 40).

The same procedure is applicable as in the case of subdivision of shares above. The by-law must declare the number and value of the shares so

decreased and the allotment thereof, or the rule or rules by which the allotment is to be made.

New Brunswick (ss. 60, 129).

The same procedure is applicable as in the case of subdivision of shares above. The by-law must declare the number and value of the shares of the stock as so reduced and the allotment thereof or the manner in which the allotment is to be made.

Ontario (s. 16).

The same procedure is applicable as in the case of increase of capital above except that there are no conditions precedent.

In all the above jurisdictions the decrease of capital is not to affect the liability of the shareholders to persons who were at the time of the reduction creditors of the company.

Dominion (ss.54-55).

The procedure is similar to that for increase of capital. No additional requirements are insisted on by the Department unless there is a cancellation or reduction of liability or repayment of capital to shareholders, in which cases the following requirements must be observed:—

(a) The company must use the words “and reduced” after its name (s. 54A) from the confirmation of the by-law until such date as the Secretary of State may fix.

(b) Creditors may object to the reduction, and provision is made for settling a list of creditors, and the additional procedure set out in s. 54B must be followed for obtaining the consent of creditors or dispensing with such consent.

(c) Publication of reasons for reduction may be required (s. 54F). Provision is also made for relieving shareholders of liability in respect of reduced shares (s. 54D). A penalty is imposed on directors and officers for concealing the names of creditors (s. 54E).

Quebec (arts. 5994-5996).

Provisions similar to, but not identical with, those set out in the Dominion Act appear in the Quebec Act. The company is not required to add the words "and reduced" to its name.

Supplementary letters patent for other purposes.

It has been seen above (p. 85) that provisions relating to preference shares are often introduced in the letters patent upon incorporation. If the preference shares have been created by by-law after incorporation it may be desirable that the by-law be confirmed by supplementary letters patent, and in some jurisdictions it is necessary, under certain conditions, that the by-law should be so confirmed (see Creation of Preference Shares, p. 86, above). In Ontario (s. 80) and New Brunswick (s. 55) a by-law increasing the amount of authorized preference shares or otherwise varying any term or provision of the issue must be confirmed by supplementary letters patent.

Supplementary letters patent are also obtainable for the purpose of changing a private company into a public company (Dominion; Ontario); changing a company with par value shares into one with shares of no par value (Dominion; Quebec; New Brunswick).

Petition and documents required.

Departmental instructions have been issued under the Dominion and Ontario Acts. These impose the following requirements as to petition and accompanying documents:—

Dominion.

The following documents are required:—

(1) Petition for supplementary letters patent signed by the directors, or a majority of them, in person and in presence of a witness who should make the required statutory declaration or affidavit of execution. The seal of the company should be attached to the petition.

(2) Declaration or affidavit verifying signatures to the petition.

(3) Declaration or affidavit verifying the truth of the facts set out in the petition and the bona fide character of the increase, decrease or sub-division.

(4) Declaration or affidavit by a responsible officer of the company proving the due passing of the by-law and producing and verifying the following:—

(a) Copy of such by-law duly certified under the seal of the company and signed by the President or Vice-President and by the Secretary;

(b) A copy of the proceedings at the meeting of shareholders with respect to the confirmation of the by-law;

(c) An extract from the general by-laws of the company setting out the provisions applicable to the calling of meetings of shareholders;

(d) A copy of the notice or advertisement, as the case may be, summoning the meeting of shareholders.

Where the application is based upon a resolution of the shareholders, and not upon a by-law, the necessary changes must be made in the above material.

Ontario.

The following are extracts from the departmental instructions:—

2. Each application must be by a formal petition of the corporation, signed by the executive officers of the corporation and passed under its common seal.

3. The petition must set forth the corporate name, the date of incorporation, the nominal capital of the company and other material facts, and show that the corporation is not in arrears in making its annual returns, and

(a) *If it be in respect of the increase of the capital of the company the petition must make it clear:*

- (1) That at least ninety per centum of the capital of the company has been subscribed and fifty per centum paid thereon;
- (2) That the capital of the company is insufficient for the purposes of the company;
- (3) That the proposed increase is considered by the company to be requisite for the due carrying out of its undertaking, and
- (4) The par value of the new shares must be the same as that of the old shares, unless the old shares are being expressly and at the same time re-divided; or

(b) *If it be in respect of a reduction of capital the petition must show that the reduced amount is sufficient for the due carrying out of the undertaking of the company and advisable, and the bona fide character of the decrease of capital thereby provided for; or*

(c) *If it be in respect of re-division of the existing shares the petition must explain the reason why such re-division is, in the opinion of the company, necessary and desirable; or*

(d) *If the Supplementary Letters Patent be for other purposes than above referred to, the necessity therefor must be set out in the petition.*

4. The facts in the petition contained and the bona fide character of the increase, decrease or sub-division must be verified

by joint affidavit or statutory declaration of the President and Secretary of the corporation.

5. The signatures to the petition and the impression of the seal must be verified by affidavit or statutory declaration.

6. With the petition the corporation must produce the following:

- (a) A statutory declaration proving that the by-law providing for the increase, decrease, sub-division, etc., has been lawfully passed by the directors and confirmed by a vote of the shareholders present or represented by proxy at a general meeting duly called for considering the same by notice specifying the terms of the by-law to be confirmed, and holding not less than two-thirds of the issued capital stock represented at such meeting; or, in the case of a corporation not having share capital, by a vote of two-thirds of the members so present or represented, as the case may be.
 - (b) A copy of such by-law, duly certified as such under the seal of the corporation;
 - (c) A certified copy of the proceedings at the meeting of shareholders or members with respect to the passage and sanction of the by-law;
 - (d) A certified extract from the general by-laws of the corporation as to the calling of the meeting of shareholders or members, and
 - (e) A certified copy of the notice mailed or copy of advertisement in the *Ontario Gazette* or local paper of the holding of such shareholders' or members' meeting;
- or
- (a) A statutory declaration proving that such by-law has been confirmed by the consent in writing of all the shareholders or members of the corporation, and
 - (b) A copy of such by-law, duly certified as such under the seal of the corporation.

For forms see Forms pp. 297-305.

Fees.

The various departments permit one application to cover a number of matters, e.g., change of name, extension of objects and increase of capital. Only one fee is charged. If the capital is increased, the fee will depend on the amount of the increase. See tables of fees, pp. 355 ff.

Nova Scotia.

Saskatchewan.

Alberta.

British Columbia.

Alteration of memorandum of association.

The memorandum of association is the company's charter. It can only be altered in the cases and in the mode and to the extent provided in the governing Act. For the alteration of the memorandum a special resolution is generally requisite and sufficient (see p. 177). In some cases confirmation of the alteration by the Court is also necessary. Where the memorandum is altered, every copy issued thereafter must be in accordance with the alteration. The provisions of the above Acts in regard to alteration of the memorandum relate, *inter alia*, to the following matters:—

Change of name.

See "Change of name," pp. 254, 255, below.

Change of registered office.

See "Change of head office," p. 216, above.

Alteration of objects.

Nova Scotia (s. 17).

Saskatchewan (s. 13).

Alberta (s. 89).

British Columbia (s. 41).

A company may by special resolution alter the provisions of its memorandum with respect to the objects of the company so far as may be required to enable it:—

(a) To carry on its business more economically or more efficiently; or

(b) To attain its main purpose by new or improved means; or

(c) To enlarge or change the local area of its operations; or

(d) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(e) To restrict or abandon any of the objects specified in the memorandum of association [or (Nova Scotia) in s. 24, sub-sec. 3 of the Act].

Nova Scotia adds:—

(f) To sell or dispose of its undertaking or any part thereof, for such consideration as it may think fit, with the sanction of a special resolution of the company;

(g) To distribute, subject to the provisions of this Act, with respect to reduction of capital, any of its property in specie among its members, with the sanction of a special resolution of the company.

Saskatchewan omits (c) above.

There is some variation between the sections.

An application must be made to the Court for an order confirming the resolution. The prescribed procedure must be followed, which includes notification of creditors; the filing with the Registrar of a copy of the order of the court and a copy of the memorandum as altered.

Instead of proceeding under the above provisions, a sale of the company's assets to a new company with objects in the form desired is often resorted to. The sale is made in consideration of the issuance of fully paid shares of the new company. These shares are then distributed among the members of the old company pro rata. The old company is then wound up and passes out of existence.

Increase of capital.

Nova Scotia (ss. 41, 44).

Saskatchewan (ss. 52, 55).

Alberta (ss. 91, 39).

British Columbia (s. 43).

A company may increase its capital by the issue of new shares of such amount as it thinks expedient, but (except in British Columbia) only if it is so authorized by its articles. If the articles do not authorize an increase of capital they may be altered by special resolution, and *then* the capital may be increased in accordance with the special resolution.

Articles frequently provide that the capital may be increased by special resolution or by resolution of the directors or by an ordinary resolution of the members.

The following is a form of resolution:—

“That the capital of the company be increased from \$40,000 dividend into 400 shares of \$100 each to \$100,000 divided into 1,000 shares of \$100 each by the creation of 600 new shares of \$100 each, and that such new shares be issued and allotted to such persons and on such terms as the directors may think fit.”

As regards preference shares, see p. 89, above.

Notice must be given to the Registrar within 15 days after the passing of the resolution. For form of notice, see App. Form 33. If the capital has been increased by special resolution, a copy thereof must also be registered (see p. 179).

In British Columbia the capital may be increased by extraordinary resolution (see p. 177), or, if the articles so provide, by ordinary resolution of the company or by resolution of the directors. A copy of the resolution must be filed with the registrar.

For fees on increase of capital, see Table of Fees, pp. 355 ff.

Subdivision of shares.

A company may subdivide its shares into shares of smaller par value than its existing shares. The effect of the statutory provisions is briefly as follows:—

Nova Scotia (s. 41).

Saskatchewan (s. 52).

If the company is so authorized by its articles, it may effect a subdivision. This must be done by special resolution. If the articles do not authorize the subdivision of shares, a special resolution must first be passed taking power to do so. Then a second special resolution must be passed exercising the power. Special resolutions must be registered.

Alberta (ss. 70, 71).

If the company is so authorized by its articles, it may effect a subdivision. If the articles do not authorize subdivision, they may be altered by special resolution and *then* the shares may be subdivided in accordance with the special resolution.

British Columbia (s. 44).

A company may subdivide its shares by special resolution, which is not to take effect until a copy has been filed with the Registrar.

Consolidation of shares.

Nova Scotia (ss. 41, 42).

Saskatchewan (ss. 52, 53).

Alberta (s. 91).

A company may consolidate its shares into shares of a larger amount than its existing shares. Similar provisions apply as in the case of increase of capital. Notice must be given to the registrar

specifying the shares consolidated (Nova Scotia, Saskatchewan).

British Columbia (s. 44).

The same provisions apply as in the case of subdivision of shares above.

Reduction of capital.

Nova Scotia (ss. 46-55).

Saskatchewan (ss. 57-67).

Alberta (ss. 78-87).

British Columbia (ss. 46-52).

A company may reduce its capital by special resolution. The articles (except in British Columbia) must, however, authorize a reduction of capital. If they do not, they must first be altered so that they do authorize a reduction of capital. In that case two special resolutions are necessary, one authorizing reduction, the other effecting the reduction.

As to different forms of reduction of capital see p. 240, above. A resolution reducing capital must be confirmed by the court on petition for such confirmation. The words "and reduced" must be added to the company's name until such date as the court fixes. Provision is made for dispensing with such addition in certain cases. The services of a solicitor are necessary.

Less formality is required in the case of cancellation of unissued capital (see Nova Scotia, ss. 48, 49 (2); Saskatchewan, ss. 52, 69; Alberta, s. 88; British Columbia, s. 43).

CHAPTER XVII.

CHANGE OF NAME.

Dominion (ss. 22, 23).

Quebec (arts. 5969, 5970, 6091).

New Brunswick (ss. 30, 31).

The company's name may be changed at the instance of the company by supplementary letters patent. See Supplementary Letters Patent, p. 244, above, for documents required. In Quebec a declaration must also be filed with the prothonotary (see p. 24, above).

For fees, see Table of Fees, pp. 355 ff.

The change of name does not affect the rights or obligations of the company.

Manitoba (ss. 92-96).

The change is made by order-in-council upon petition to the Lieutenant-Governor-in-Council who must be satisfied that the company is solvent, that it is not in default under any Manitoba statute, that the change is not desired for any improper purpose and is not otherwise objectionable, and that notice has been given as required by the Act. The company must give at least four weeks' previous notice in the Manitoba Gazette and in some newspaper published in or near the locality in which the operations of the company are carried on, of the intention to apply for the change of name, and the notice must state the name proposed to be adopted. If the proposed name is objectionable, a different name may be given without new advertising being required. For fees, see

Table of Fees, p. 365. There is a further fee of \$5.00 for publication of notice of the change of name by the Provincial Secretary in the Manitoba Gazette. The company's contracts and liabilities are not affected by the change of name.

Ontario (s. 40).

The change is made by order of the Lieutenant-Governor, upon being satisfied that the company is solvent, that the change desired is not for any improper purpose and is not otherwise objectionable. If the proposed name is objectionable, a different name may be granted. The company's rights or obligations are not affected by the change in name.

The following is an extract from the departmental regulations:—

2. The application must be a formal petition of the corporation, signed by the executive officers of the corporation and passed under its common seal.

3. The petition must set forth the corporate name, the date of incorporation and other material facts, and should show

(a) That the corporation is solvent and that the change desired is not for any improper purpose and is not otherwise objectionable, as above set out;

(b) That the new name is not objectionable upon any public ground and is not that of any known corporation or association incorporated or unincorporated, or of any partnership, or of any individual, or any name under which any known business is being carried on, or so nearly resembling the same as to be calculated to deceive;

(c) That the corporation is not in arrears in making its annual returns.

4. The facts in the petition contained must be verified by joint affidavit or statutory declaration of the President and Secretary of the corporation.

5. The signatures to the petition and the impression of the seal must be verified by affidavit or statutory declaration.

6. With the petition the corporation must produce the following:

- (a) A statutory declaration proving that the by-law authorizing the application for an order changing the name of the corporation has been lawfully passed by the directors and confirmed by a vote of the shareholders, present or represented by proxy at a general meeting duly called for considering the same by notice specifying the terms of the by-law to be confirmed, and holding not less than two-thirds of the issued capital stock represented at such meeting, or, in the case of a corporation not having share capital, by a vote of two-thirds of the members so present or represented, as the case may be.
- (b) A copy of such by-law, duly certified as such under the seal of the corporation;
- (c) A certified copy of the proceedings at the meeting of shareholders or members with respect to the passage and sanction of the by-law;
- (d) A certified extract from the general by-laws of the corporation as to the calling of the meeting of shareholders or members;
- (e) A certified copy of the notice mailed or copy of advertisement in the *Ontario Gazette* or local paper of the holding of such shareholders' or members' meetings; and
- (f) Evidence of the solvency of the corporation, which must consist of a sworn copy of the last balance sheet or other sufficient statement of the affairs of the corporation, prepared by some responsible person conversant with its business. The statement should with reasonable detail show the nature, character and value of the corporation's assets and character of its liabilities. If more than a month or so has elapsed since the preparation of the statement, the affidavit or statutory declaration verifying its contents must, if such be the case, show that the position of the corporation has not materially changed since the statement was prepared.

For fees, see Table of Fees, p. 359, below.

For forms, see Forms pp. 244-248.

Nova Scotia (ss. 15, 16).

The company, with the sanction of a special resolution, and with the approval of the Governor-in-Council, may change its name. Upon such change being made, the registrar is to enter the new name on the register in place of the former name, and is

to issue a certificate of incorporation altered to meet the circumstances of the case. The change of name does not affect the rights or obligations of the company.

Saskatchewan (ss. 10, 11, 12).

Alberta (ss. 92, 93).

The change is made by the registrar, upon being satisfied (1) that the company is in a solvent condition; (2) that the change of name is not objectionable; (3) that the change of name has been sanctioned by a special resolution of the company, and (4) that notice of the change has been given. The company must give at least one month's previous notice in the Gazette, and in some newspaper published or circulated in the locality in which the operations of the company are carried on, of its intention to apply for the change of name and must state the name proposed to be adopted. The rights or obligations of the company are not affected by the change of name. In Saskatchewan provision is made for registration in the Land Titles Office of a certificate of the registrar showing the change of name (s. 12).

British Columbia (s. 39).

A company may by special resolution and with the approval of the registrar, signified in writing, change its name. The company must publish a notice of its intention to apply for the change of name and of the name proposed to be adopted. The notice must be published for four weeks in the Gazette, and once a week for four consecutive weeks in a newspaper published or (where there is none published) circulated in the locality where the company's registered office is situated, and in the local-

ity in which the operations of the company are carried on. The company must file with the registrar a statutory declaration proving such publication. When the special resolution and the statutory declaration have been filed with the registrar and his lawful requirements as to returns and reports complied with, the registrar enters the new name on the register in place of the former name and issues a certificate showing the change.

The change does not affect the company's rights or obligations.

CHAPTER XVIII.

SALE OF ASSETS; AMALGAMATION; RECONSTRUCTION AND REORGANIZATION.

Sale by company of its assets and undertaking.

The letters patent or memorandum of association usually will contain a provision that the company may sell or dispose of its assets and undertaking (i.e., its business) or any part thereof for such consideration as the company may think fit, and in particular, for shares or securities of any other company having objects altogether or in part similar to those of the company.

In some jurisdictions (e.g., Ontario and New Brunswick) such a power is conferred by the Act itself.

In Alberta a mining company incorporated under s. 63 is to be deemed to have certain designated powers, which include a power to sell the undertaking (s. 63a (12)).

In British Columbia a specially limited mining company may set out in the memorandum a power to sell the undertaking in the terms of s. 21 (2) (m) of the Act.

Legal advice is desirable in carrying out a sale.

In Ontario (s. 23 (1) (m)) and New Brunswick (s. 14 (1) (m)) there are special statutory provisions which must be observed. The Ontario section reads as follows:—

23.—(1) A company shall possess as incidental and ancillary to the powers set out in the Letters Patent or Supplementary Letters Patent power to:

- (m) Sell or dispose of the undertaking of the company or any part thereof for such consideration as the company may think fit, and in particular for shares, debentures or securities of any other company having objects altogether or in part similar to those of the company, if authorized so to do by the vote of a majority in number of the shareholders present or represented by proxy, at a general meeting duly called for considering the matter, and holding not less than two-thirds of the issued capital stock of the company.

The New Brunswick section is identical with the foregoing.

In Nova Scotia every company formed under the 1921 Act has power to sell its undertaking with the sanction of a special resolution, unless such power is excluded or modified by express provision in the memorandum. Any company may by special resolution alter its memorandum to include the right to sell its undertaking (ss. 24, 17).

It will be seen that in Ontario and New Brunswick the approval of a specified majority of the shareholders is required. In other jurisdictions it is the practice for the directors to secure the approval of the shareholders before carrying out a sale of the company's assets and undertaking or any substantial part thereof. In the case of companies incorporated by letters patent the directors pass a by-law authorizing the sale and have the by-law approved by a special general meeting of shareholders.

In Ontario and other provinces where Bulk Sales Acts are in force, the provisions of such Acts, if applicable, must be complied with.

A sale may also be made by the liquidator where the company is being wound up under the Winding-up Act, or where it is being voluntarily wound up under the local provincial provisions applicable to the winding up of a provincial company on grounds

other than insolvency. Where the latter provisions apply, the liquidator is given power to sell the assets for shares of another company with the sanction of a general meeting of the company by which he was appointed. A dissenting shareholder may, by following the procedure specified, require the liquidator either (a) to abstain from carrying the resolution into effect, or (b) to purchase the interest of the dissenting shareholder.

In Ontario and Quebec special provision is made for the distribution of assets among the shareholders where the company has ceased to carry on business except for the purpose of winding up its affairs. (see pp. 234, 235, above).

Reconstruction and reorganization.

The usual mode of reconstruction is where the undertaking and assets of a company (or the major part) are sold to a new company formed for the purpose, whose shareholders are substantially those of the vendor company. The transfer is made in consideration of the issuance of shares of the purchaser company to the vendor company, which distributes the shares among its own shareholders. The vendor company then passes out of existence and its business is carried on by the new company. The above course is often desirable for one or more reasons, of which the following are examples:—The share capital may be too large or too small. The provisions relating to the share capital may be inconvenient or unsuitable. It may be desirable to divide the shares into various classes, e.g., preference and common; or to alter the rights attaching to existing preference shares. In any of these cases it is often cheaper and simpler to incorporate a new company than to alter the constitution of the existing one.

Reconstruction may be effected in various ways in different jurisdictions. In the case of companies incorporated by letters patent, a sale may be made in pursuance of a power in the letters patent or (as in Ontario and New Brunswick) conferred by the Act. The statutory or charter provisions which govern the company must be observed (see p. 257, above). After the sale has been completed and the shares of the new company issued to the vendor company, the vendor company will distribute such shares among its own shareholders, either in pursuance of a power in the letters patent or a power conferred by the governing Act or as incident to a winding-up (see distribution of assets in specie, p. 234, above).

In jurisdictions where there is a statutory provision for reconstruction contained in the local Winding-up Act or winding-up provisions of the Companies Act, the vendor company is voluntarily wound up. The liquidator, in pursuance of a resolution of the members of the vendor company, sells the business to the purchaser company for shares or securities of the purchaser company. These are distributed among the shareholders of the company which is being wound up. Any shareholder of the transferor company who did not vote in favor of the resolution and who expresses his dissent in the manner prescribed, may require the liquidator either (a) to abstain from carrying the resolution into effect, or (b) to purchase his interest at a price to be determined by agreement or by arbitration in the manner provided by the Act. Where such provisions are in force and apply, a sale cannot be effected under a power in the memorandum of association in disregard of the above rights conferred on dissentient shareholders. For examples of such statutory

provisions see Nova Scotia (R. S. N. S. 1900, c. 129, s. 22). Similar provisions are in force in Manitoba (R. S. 1913, c. 205, s. 14); Ontario (s. 184). In these jurisdictions provision is also made in the Companies Act for distribution of assets and surrender of charter.

The term reconstruction is sometimes applied to an arrangement or compromise made by a company with its creditors or members under a provision contained in the governing Act, e.g., s. 132 of the British Columbia Act. A meeting is summoned and if a majority in number representing three-quarters in value of the creditors or class of creditors, or members or class of members, as the case may be, present in person or by proxy at the meeting, agree to the compromise or arrangement, the compromise or arrangement, if sanctioned by the court, becomes binding. Similar compromises may be effected under the provisions of the Bankruptcy Act (p. 343, below, or of the Winding-up Act (p. 349, below).

Reorganizations are also effected by bondholders, by proceeding to enforce their security, or by exercising their control over unsecured creditors or holders of junior securities. Bondholders, when their security has become enforceable, can have a receiver and manager appointed. This may be done either by the Court, which is the more usual course, or under the provisions of the trust deed. If necessary and desirable, the receiver and manager can continue the business pending the carrying out of the reorganization. A scheme of reconstruction is then propounded and carried out with the assent of the bondholders. Frequently a committee is appointed by the bondholders under an agreement conferring on the committee wide powers for the

purpose of realizing the assets and effecting a reorganization in the interests of the bondholders. An agreement is signed by the bondholders who deposit their bonds with a depositary (usually a trust company) for the purpose of the agreement. Such an agreement is called a deposit agreement. The actual details of reorganizations vary with each case. Usually the plan adopted involves the transfer of the assets to a new company, the bondholders, unsecured creditors, and sometimes the shareholders, taking securities or shares in the new company in lieu of their existing securities and claims.

Sometimes reorganizations are effected through modification of bondholders' rights. Modern trust deeds contain very broad provisions, whereby a stated majority of bondholders can compel the minority to submit to a modification of the rights conferred by their security and accept in lieu thereof securities or shares of the company or of a new company.

Where a company is insolvent, non-assenting creditors (other than bondholders) cannot be prevented from obtaining a winding-up order or a receiving order under the Bankruptcy Act, but if the bonds are properly secured this will not prevent the scheme of reorganization from being carried out.

Amalgamation.

Amalgamation is a term loosely applied to various forms of union of interests of two or more companies. Among the methods adopted to effect an amalgamation are the following:—

1. By means of a sale of the assets of one (or more than one) company to an *existing* company in consideration of the issuance of paid-up shares of

the latter. The vendor company will then distribute the shares among its own shareholders and be wound up or surrender its charter.

2. By means of a sale of the assets of two or more companies to a *new* company formed to carry on the amalgamated business. The sale will be in consideration of the issuance of shares of the new company. The vendor companies will distribute the shares of the purchaser company among their own shareholders and will then be wound up or will surrender their charters.

In both the above cases the procedure is similar to that upon a reconstruction (see p. 260, above).

3. By a lease of the whole or a substantial part of the assets and business of one or more companies to another company. Under this procedure the lessor company remains in existence and distributes by way of dividends among its shareholders the rentals paid by the lessee company.

4. By vesting the control of two or more companies in the hands of one person, group, syndicate or company. Sometimes a company is incorporated as a "holding company," which acquires and holds the majority of the shares of two or more other companies. The holding company is, accordingly, able to elect its own nominees to the board of directors of the other companies and thereby, in effect, is able to cause the several businesses to be carried on as the business of one company. Often this plan is only a step towards effecting a complete amalgamation. The shareholders of the constituent companies are induced to exchange their shares for shares of the holding company and, when the exchange is complete, and the holding company owns or controls

all the shares of the constituent companies, the latter can then be wound up.

Amalgamation under statute.

In Ontario (s. 10) Quebec (art. 5967f) and Manitoba (s. 20A) an amalgamation can also be effected under the Act. Two or more companies incorporated under the Act may enter into a joint agreement which prescribes the terms and conditions of amalgamation and the mode in which it is carried into effect. For a form of such agreement, see Forms p. 1. The agreement is submitted to separate meetings of the shareholders of each company. If the agreement is approved by two-thirds of the votes of all the shareholders of each company an application is made by way of joint petition to the Lieutenant-Governor for letters patent confirming the agreement. Upon the issuance of the letters patent the companies become amalgamated and form one corporation. A pamphlet outlining the procedure in Ontario is obtainable gratis from the department of the Provincial Secretary. See further on amalgamation Company Law, pp. 588-597.

CHAPTER XIX.

TERMINATION OR IMPAIRMENT OF CORPORATE EXISTENCE OTHERWISE THAN ON ACCOUNT OF INSOLVENCY.

Surrender of charter.*Ontario* (s. 31).*Quebec* (art. 5973a).*Manitoba* (ss. 78-79).*New Brunswick* (s. 32 (1) (2)).

In the above jurisdictions provision is made for the surrender of the company's charter and its cancellation upon compliance with the requisite formalities.

The Ontario section is as follows:—

31.—(1) The charter of a corporation incorporated by Letters Patent may be surrendered if the corporation proves to the satisfaction of the Lieutenant-Governor:

- (a) That it has no debts or obligations; or
- (b) That it has parted with its property, divided its assets rateably amongst its shareholders or members, and has no debts or liabilities; or
- (c) That the debts and obligations of the corporation have been duly provided for or protected or that the creditors of the corporation or other persons holding them consent; and
- (d) That the corporation has given notice of the application for leave to surrender by publishing the same once in the *Ontario Gazette* and once in a newspaper published at or as near as may be to the place where the corporation has its head office.

(2) The Lieutenant-Governor, upon a due compliance with the provisions of this section, may accept a surrender of the charter and direct its cancellation, and fix a date upon and

from which the corporation shall be dissolved, and the corporation shall thereby and thereupon become dissolved accordingly. 2 Geo. V. c. 31, s. 31.

The Quebec, Manitoba and New Brunswick provisions follow closely the Ontario section.

In Quebec the company must give notice of the application for leave to surrender by publishing the same, once in the Quebec Official Gazette, and once in a newspaper published in the French language and once in a newspaper published in the English language at, or as near as may be to, the place where the company has its head office.

In Manitoba the company must give notice of the application for acceptance of surrender in one issue of the Manitoba Gazette, and in a local newspaper (published at or near the place where the head office of the company is located) at least one month prior to the application.

In New Brunswick notice must be published once in the Royal Gazette and once in a newspaper published at or as near as may be to the place where the company has its head office.

The above procedure is frequently adopted where it becomes advisable, on grounds other than insolvency, to terminate the existence of the company. Surrender of charter is much the simplest and cheapest way of winding up the company's affairs, but is only appropriate where there are no creditors or the creditors consent or are paid off or their claims provided for. The following are the departmental instructions under the Ontario Act.

2. The application must be by a formal petition of the corporation, signed by the executive officers of the corporation and passed under its common seal.

3. The petition must set forth the corporate name, the date of incorporation and other material facts, and should specify clearly the grounds upon which the corporation feels that it is

justified in making the application under the provisions above referred to, and show that the corporation is not in arrears in making its annual returns.

4. The facts in the petition contained must be verified by joint affidavit or statutory declaration of the President and Secretary of the corporation.

5. The signatures to the petition and the impression of the seal must be verified by affidavit or statutory declaration.

6. With the petition the corporation must produce the following:

- (a) A statutory declaration proving that the by-law authorizing the application for an Order accepting the surrender of the Letters Patent of the corporation has been lawfully passed by the directors and confirmed by a vote of the shareholders, present or represented by proxy at a general meeting duly called for considering the same by notice specifying the terms of the by-law to be confirmed, and holding not less than two-thirds of the issued capital stock represented at such meeting, or, in the case of a corporation not having share capital, by a vote of two-thirds of the members so present or represented as the case may be;
- (b) A copy of such by-law, duly certified as such under the seal of the corporation;
- (c) A certified copy of the proceedings at the meeting of shareholders or members with respect to the passage and sanction of the by-law;
- (d) A certified extract from the general by-laws of the corporation as to the calling of the meeting of shareholders or members;
- (e) A certified copy of the notice mailed or copy of advertisement in the *Ontario Gazette* and local paper of the holding of such shareholders' or members' meeting;
- (f) A verified statement of the affairs of the corporation; and
- (g) The charter of the corporation, in order that it may ultimately have endorsed upon it the fact that its surrender has been accepted by the Lieutenant-Governor, and that it may be officially cancelled and deposited in the office of the Deputy Provincial Registrar.

For forms, see Forms, pp. 538 ff.

For fees, see Table of Fees, pp. 359 ff., below.

Dominion.

There is no provision in the Act for surrender of charter, but hitherto the Department has permitted

the charter to be handed in, where the company has ceased to carry on any business.

Forfeiture of letters patent.

Dominion (s. 27).

Ontario (ss. 28, 29, 30 (3)).

Quebec (art. 5973).

Manitoba (ss. 21, 77, 80-86).

New Brunswick (s. 32).

The above Acts all provide that the charter is to become forfeited where the charter is not used for a stated period or the company does not go into actual operation within a stated period after incorporation. The period in each case is three years, except in Ontario, where it is two years. The better view is that some action by the department is necessary to bring about an actual forfeiture.

See further Company Law, p. 68.

The following special provisions as to forfeiture or revocation of charter should be noticed.

Ontario.

The letters patent and any supplementary letters patent may, at any time, be declared to be forfeited and may be revoked and made void by the Lieutenant-Governor-in-Council, on sufficient cause being shown, upon such conditions and subject to such provisions as he may deem proper (s. 29). If the number of shareholders is not brought up to five, after notice from the Provincial Secretary, the letters patent may be revoked (s. 30 (3)).

Manitoba.

The Lieutenant-Governor-in-Council may, at any time, revoke the letters patent on account of the

violation by the company of any of the provisions of the Act respecting the annual summary, in so far as it is required to show the number of acres of land held by the company and when they were purchased (s. 77).

For failure for three successive years to file the returns called for by ss. 80 ff., it is declared that the letters patent shall be ipso facto revoked and cancelled, but without affecting the liability of the company or its shareholders for any debts or liabilities of the company (s. 86).

Forfeiture of certificate of incorporation.

Alberta (s. 24a).

The certificate of incorporation may be forfeited, revoked and made void by an order of the Lieutenant-Governor-in-Council on such conditions and subject to such provisions as he may think proper.

British Columbia (s. 166).

On sufficient cause being shown and upon such conditions and subject to such provisions as may be deemed proper, the Lieutenant-Governor-in-Council may revoke and cancel the certificate of incorporation of a company and may declare the company to be dissolved.

Defunct companies.

Dominion (s. 106(8)).

Ontario (s. 38).

If a company fails for three consecutive years to file its annual summary, its name may be given, in whole or in part, to a new company, unless the defaulting company, after notice, proves that it is

still a subsisting company. The company may by further default after such notice lose the right to the use of its corporate name. Where no annual summary has been filed for three years immediately following incorporation, the company's name may be given to another company without notice and the defaulting company is to be deemed not to be subsisting.

Removal from register of companies in default or defunct.

Nova Scotia (s. 99).

The registrar may strike a company off the register if he believes that the company is not carrying on business or in operation. If, after notice as provided in the Act, the company's name is struck off the register, the company will be dissolved. The liability (if any) of every director, managing officer and member, nevertheless, continues and may be enforced as if the company had not been dissolved. If the company or any member feels aggrieved, application may be made to the Court. If the Court is satisfied that the company was, at the time of the striking off, carrying on business or in operation, and that it is just to do so, may order the name of the company to be restored to the register and thereupon the company is to be deemed to have continued in existence.

Saskatchewan (ss. 31-33a).

If the registrar has reasonable cause to believe that a company registered under the Act has ceased to carry on business he may strike its name off the register. This is done after notice as provided in the Act. Thereupon the company, if a Saskatchewan

company, is to be dissolved. The liability (if any) of every director, manager, secretary or other officer or member of the company nevertheless continues and may be enforced as if the company had not been dissolved. Provision is made for restoring the name of the company to the register on the application of the company or any member or creditor. The application is to the Court. The Court, if satisfied that the company was, at the time of the striking off, actually carrying on business or in operation and that it is just and proper to do so, may order the name of the company to be restored to the register. If the name of the company is restored, it is to be deemed to have continued in existence.

The name of the company may also be struck off the register for non-payment of any fee prescribed by the regulations. The registrar sends the company a registered letter notifying it of its liability, and, at the expiration of one month, if the fee remains unpaid, the company may be struck off without further notice. The liability of every director, officer or member of the company continues.

If a registered company fails to comply with any of the requirements of the Act in any particular in which no other procedure is prescribed, the name of the company may be struck off the register after notice from the registrar. The name of the company may be restored on application to the Court by the company or a member or creditor.

Alberta (s. 24).

The registrar may strike a company off the register if he has reasonable cause to believe that it is not carrying on business or in operation. If, after notice, as provided in the Act, the company's name

is struck off the register, the company will be dissolved. The liability (if any) of every director, managing officer and member continues and may be enforced as if the company had not been dissolved. Provision is made for restoring the name of the company to the register on the application of the company or any member or creditor. The application is to the Court. The Court, if satisfied that the company was, at the time of the striking off, actually carrying on business or in operation and that it is just and proper to do so, may order the name of the company to be restored to the register. If the name of the company is restored, it is to be deemed to have continued in existence. Provision is also made for striking a company off the register where it is being wound up and the registrar has reasonable cause to believe that no liquidator is acting or that the affairs of the company are fully wound up and the liquidator has failed to make the required returns.

British Columbia (ss. 167-171).

The name of a company or an extra-provincial company may be struck off the register, where it has failed to file any return, notice or document required to be filed with the registrar pursuant to the Act or any former "Companies Act" for two consecutive years, or the registrar has reasonable cause to believe that the company or extra-provincial company is not carrying on business or in operation. This is done after notice to the company and in the Gazette as provided in the Act. Thereupon, after publication of further notice, the company is to be dissolved; or, in the case of an extra-provincial company, is to be deemed to have ceased to carry on

business in the province. The liability (if any) of every director, manager, officer and member of the company is to continue and may be enforced as if the company had not been struck off the register. Provision is made for restoring the name of the company to the register on the application of the company or any member or creditor. The application is to the Court. The Court, if satisfied that the company, at the time of the striking off, was carrying on business or in operation, or otherwise that it is just to do so, may order the name of the company to be restored to the register. Thereupon the company is to be deemed to have continued in existence, or, if an extra-provincial company, to be still entitled to carry on business in the province. Special regulations as to procedure and otherwise are set out in ss. 168 (2)ff.

The registrar may also strike the company off the register on the request of the company. The request is to be made by resolution and there must be filed with the registrar a statutory declaration of two or more directors proving that the company has no debts or liabilities (s. 167(4)).

Provision is also made for striking off the register a company or extra-provincial company which is being wound up, if the registrar has reasonable cause to believe that no liquidator is acting or that the affairs of the company are fully wound up or if the returns required to be made by the liquidator have not been made (s. 167(3)).

Carrying on business with less than minimum number of shareholders.

Ontario (s. 30).

Nova Scotia (s. 95).

Saskatchewan (s. 46).

Alberta (s. 106).

British Columbia (s. 266).

In the above jurisdictions serious results may follow if the company carries on business (or—in Ontario—exercises its corporate powers) with less than the statutory minimum of shareholders. The minimum under the different Acts is as follows:—

Ontario, 5; Nova Scotia, Saskatchewan and Alberta, 3; British Columbia, 5 in the case of a public company, 2 in the case of a private company.

If the company carries on business (or—in Ontario—exercises its corporate power) for more than six months with less than the legal minimum, every shareholder during the period of default cognizant of the default is to be severally liable for the whole of the debts of the company contracted during the period of default and may be sued for the sum without joinder in the action of any other shareholder. In Ontario the corporation need not be joined either.

In Ontario, any shareholder who becomes aware of the default, may exonerate himself from liability by notifying the company and the Provincial Secretary as prescribed by s. 30 (3). The company's charter may be revoked if the corporation fails to bring its shareholders up to 5 after notice by the Provincial Secretary (s. 30 (3)).

The above penalty may be guarded against by transferring shares to enough individuals to bring the number of shareholders up to the required minimum.

Appointment of inspectors.

Dominion (ss. 92-94).

Ontario (ss. 20, 126).

Quebec (arts. 6030-6030A).

Manitoba (ss. 98-104).

New Brunswick (s. 102-3).

Nova Scotia (ss. 92, 93).

Saskatchewan (ss. 124-126).

Alberta (ss. 125-130).

British Columbia (ss. 133, 134).

All the Acts provide for appointment of inspectors to investigate the affairs of the company and to report thereon. In all jurisdictions the appointment may be made by the Court (Ontario, New Brunswick) or a designated official on the application of shareholders. In some jurisdictions a stated proportion of shareholders is required; in others (e.g., Dominion) the proportion is such as in the opinion of the Department warrants the application. In some jurisdictions there is an additional provision for the appointment of the inspectors by the company, upon a resolution being passed by the shareholders in the manner required. These provisions for the appointment of inspectors are rarely made use of.

CHAPTER XX.

BLUE SKY LAWS.

Manitoba (Sale of Shares Act, 1913, c. 175, as amended).

Saskatchewan (Sale of Shares Act, 1920 c. 199).

Alberta (Sale of Shares Act, 1916 c. 8, as amended).

Each of the above provinces has passed an Act prohibiting, under penalty, the sale or advertising for sale of shares or securities of companies within the province unless permission to do so has been obtained. This permission is granted by the official or body administering the Act—in Manitoba, the Public Utility Commissioner; in Saskatchewan, the Local Government Board; in Alberta, the Board of Public Utility Commissioners. An agent appointed for the purpose of selling shares or securities must take out an annual license under the Act.

Securities excepted.

Manitoba (s. 3).

The Act is not to apply to the sale of certain designated government and municipal securities or to the sale of any stocks, bonds, debentures or other securities authorized by the Commissioner to be sold or listed on any stock exchange which has been approved for the purpose of section 3 by the Commissioner.

Saskatchewan (s. 3).

The Act is not to apply to the sale of certain designated government, municipal or public utility

securities or securities authorized for the investment of trust funds or shares of certain corporations not incorporated for gain, or to the sale of any stocks, bonds, debentures or other securities authorized by the Board to be sold or listed on any stock exchange which has been approved for the purpose of section 3 by the Board.

Alberta (s. 3).

The Act is not to apply to certain designated government or municipal securities or to the sale of any stock, bonds, debentures or other securities authorized by the Board of Public Utility Commissioners, or sold or listed on any stock exchange which has been approved for the purpose of section 3 of the Board of Public Utility Commissioners; nor is the Act to apply to the debentures of any corporation whose stock is so listed, nor to any shares or stock issued by any company in lieu of dividends.

Certain acts not unlawful.

Manitoba (s. 5, c. 105, 1914).

The Act contains the provision set out below which is applicable to shares, stocks, bonds and securities of any corporation or company incorporated by or under the authority of the Parliament of Canada or the Legislature of Manitoba or licensed under the Manitoba Insurance Act or the Manitoba Act respecting the Licensing of Extra-provincial Corporations or subject to taxation under the Corporations Taxations Act or the Railway Taxation Act.

It is declared that it shall not be an offence or unlawful for any such corporation or company, or its officers or agents, or for any person who owns shares, stocks, bonds or securities thereof, to sell or attempt to sell any such shares, stocks, bonds or securities when such sale or attempt to sell is not made in the course of continued and successive acts. The printing, pub-

lication or advertisement in any newspaper, magazine or other periodical, or by any other means of display whatsoever, or the issue, putting forth or distribution of any advertisement, circular letter or other paper containing any offer to sell or solicitation to purchase or intimation of the fact of the issue of any of any such shares, bonds, stocks, or other securities, or solicitation by agents or employees, shall be evidence of an attempt to sell in the course of continued and successive acts and in violation of this Act.

Saskatchewan (s. 22).

The Act contains the provisions set out below which are applicable to the following companies:— A company incorporated by or under the authority of the Parliament of Canada or of the Legislature of the Province of Saskatchewan, or licensed under the Saskatchewan Insurance Act, or the Saskatchewan Companies Act, or subject to taxation under the Corporations Taxation Act, or any of the former Acts or ordinances dealing with the same subject matter as these Acts and for which these Acts are substituted.

A company . . . the officers or agents of such company, or any person who owns shares, stocks, bonds or securities thereof, may sell or offer for sale any such shares, stocks, bonds or securities, when such sale or attempted sale is not made in the course of continued and successive acts.

(2) The printing, publication or advertisement in any newspaper, magazine or other periodical, or by any other means of display, or the issue, putting forth or distribution of any advertisement, circular letter or other paper containing an offer to sell, solicitation to purchase, or intimation of the fact of the issue of any such shares, bonds, stocks or other securities, or solicitations by agents or employees, shall be evidence of an attempt to sell in the course of continued and successive acts and in violation of this Act.

Alberta (s. 17).

The Act contains the following provision:—

It is declared that it shall not be an offence against this Act or unlawful for any corporation or company, or its officers or

agents, or for any person who owns shares, stocks, bonds or securities thereof, to sell or attempt to sell such shares, stocks, bonds or securities, if such sales or attempts to sell are not made in the course of continued and successive acts. The printing, publication or advertisement in any newspaper, magazine or other periodical, or by any other means of display whatsoever, or the issue, putting forth or distribution of any advertisement, circular letter or other paper containing any offer to sell or application to purchase or intimation of the fact of the issue of any such shares, bonds or other securities, or solicitation by agents or employees, shall be evidence of an attempt to sell in the course of continued and successive acts in violation of this Act.

Application for certificate.

Every company is to obtain a certificate before attempting to sell any shares or securities in the province. The exceptions to this requirement are noted above.

The fees payable with the application are as follows:—

Manitoba—Filing fee of \$5 (s. 7).

Saskatchewan—Filing fee of \$10 (s. 6).

Alberta—Filing fee depending on the amount of the issue sought to be authorized according to the following tariff:—

Where the par value of the proposed issue of shares, stock or other securities is under \$25,000	\$ 10.00
\$ 25,000 and under \$ 50,000	15.00
50,000 and under 75,000	20.00
75,000 and under 100,000	25.00
100,000 and under 250,000	35.00
250,000 and under 500,000	50.00
500,000 and over	100.00

The application is usually made by letter. In Alberta forms of application are available. Copies of the Act may be obtained gratis upon application to the official or board administering the Act. Applications must be accompanied by the prescribed

material. The following material is required in Alberta:—

1. Copy of charter.
 2. Constitution and by-laws.
 3. Statement giving plan of proposed business.
 4. Copies of contracts re patents or purchase of rights, etc.
 5. Itemized account of financial condition, showing the company's property, assets and liabilities.
 6. Names of directors and stock subscribed and paid by each.
 7. Specimen of share certificate.
 8. Prospectus.
 9. If the company is not incorporated in Alberta, a written consent that action may be commenced against it in the proper Court of any judicial district or division in which a cause of action may arise, or in which the plaintiff may reside, by the service of process on the Provincial Secretary.
 10. Address of head office.
 11. Where property is involved, proof of title must be furnished.
 12. Contract re commission for sale of shares.
- Additional material is required in the case of mining and oil companies.

Documents must be verified by oath of an authorized officer of the company. Recorded documents must be further verified as true copies by the officer of whose records they form a part. Additional material may be required. Similar material is required in Manitoba and Saskatchewan.

In Manitoba requirement 9 above applies to all companies.

In Saskatchewan requirement 9 above is not imposed.

In the case of a company which is not organized under the laws of the province (or, in Saskatchewan not organized under the laws of Canada or any province) the following further material must be filed:—A copy of the laws under which the company exists or is incorporated; and (in Manitoba and Alberta) a copy of the charter, articles of incorporation, constitution and by-laws and all amendments

and all other papers pertaining to its organization; (in Saskatchewan) a copy of its charter, memorandum of agreement or association or constitution and by-laws and all amendments.

Amendments.

All amendments to the documents filed must be recorded. In Saskatchewan (s. 13) any amendment to certain documents operates as a revocation of the certificate and licenses issued to agents, but application for a new certificate may be made (s. 15).

Issuance of certificate; revocation.

If the application is approved, the certificate is issued. A certificate may be revoked. In Alberta the certificate is to be renewed annually.

Agents' license.

An agent to sell shares or securities must register as such and he must obtain from the Board or Commissioner an annual license. The fee in Manitoba and Saskatchewan is \$1 for the registration and \$1 for the license. In Alberta the fee is \$5 for the license. The license is good until the first of January following unless it is sooner revoked. The agent must produce the license to every person with whom he proposes to do business.

In Alberta the agent must deliver to the purchaser a copy of the contract for purchase as approved by the Board. The contract must have printed on its face in prominent type a notice in the prescribed form (s. 11(3)) to the effect that the shares or securities are not recommended as an investment. If the purchaser does not receive a copy

of such contract, the sale of shares or securities is not binding on him (s. 11 (4)).

Licenses to agents may be cancelled under certain circumstances.

Power of investigation, etc.

A power of investigation is conferred by the Act. It is also provided that a receiver may be appointed and the company's business wound up if the assets are not equal to liabilities and in other specified events.

Unlawful advertising.

No printer, publisher, newspaper proprietor or other person is to advertise in the province the sale or offer for sale of any shares or securities until the company has obtained a certificate.

Special certificate.

In Manitoba and Saskatchewan certain classes of companies whose business is undeveloped may obtain a special certificate under certain circumstances. Such companies must deposit the proceeds of shares, less specified deductions, with a licensed trust company in trust to apply the net proceeds to the development or operation of the undertaking of the company only. Share certificates of such companies must have conspicuously written or printed on the face of them the words "Development Stock."

Annual returns.

Every company must file with the Board or Commissioner every twelve months a verified statement in the prescribed form. The filing fee is \$2.50 in Manitoba and Alberta; \$5 in Saskatchewan.

Penalties.

A maximum fine of \$500 for violation of the Act, and, in default of payment, imprisonment for a term not exceeding six months may be imposed.

Quebec (Mining Companies Act).

Paragraph 6 contains the following provisions applicable to mining companies incorporated outside the province:—

6753. No mining company, the principal office whereof is situate outside this Province, can sell, or otherwise alienate, directly or indirectly, in this Province, its shares, stock, stock certificates, debentures or other securities, unless it has previously obtained an authorization for that purpose from the Lieutenant-Governor. 63 V., c. 33, s. 11.

6754. Such authorization shall be given upon petition, if the company:

Deposits in the office of the Provincial Secretary a copy of its charter and of its letters-patent;

2. Establishes under oath, if required, that it owns sufficient property and conducts its operations so as to merit public confidence;

3. Deposits in the office of the Provincial Secretary a power of attorney appointing a chief agent in this Province for the purpose of receiving service in all actions proceedings taken against it, and declaring where the head office of the company in the Province will be. 63 V., c. 33, s. 12.

6755. Before the authorization is granted, the company shall establish, to the satisfaction of the Provincial Secretary or of any other functionary or officer empowered by order of the Lieutenant-Governor-in-Council to report upon such matter, that the facts alleged in its petition are true, and that it offers sufficient guarantees to justify the granting of the authorization.

For that purpose, the Provincial Secretary or such other officer, may require the production of any document which he deems necessary, and take and keep in writing any evidence under oath or affirmation, and may administer any affirmation or oath required. 63 V., c. 33, s. 13.

For further provisions see arts. 6756-6759.

*British Columbia.***Extra-provincial companies.**

Companies incorporated or established outside the province are required to be registered under the British Columbia Companies Act (see p. 293, below). Additional requirements are imposed if the company proposes to sell shares or debentures in the province. These requirements are contained in ss. 143 (3)(b) and (c) and 162 of the Act and read as follows:—

143.—(3) (b) If the company proposes to sell any of its shares or debentures in the Province, and the company is, under the laws of the Province, State, or country where it was incorporated, required to obtain a license or other form of authority before it is permitted to offer for subscription or sale any of its shares or debentures, the statement shall be accompanied by a copy of the license or other form of authority and of the material filed on the application for the license or other form of authority (except in so far as the material is already provided for by this section), verified in manner satisfactory to the Registrar. (*New.*)

(c) If the company proposes to sell any of its shares or debentures in the Province and clause (b) does not apply, the company shall file with its statement a prospectus complying with this Act, or if it does not intend to offer in the Province such shares or debentures to the public for subscription or purchase, a statement in lieu of prospectus according to Form 4 in the Second Schedule, such changes in the prospectus or statement being made as the facts demand, and sections 89 and 90 shall *mutatis mutandis* apply to every prospectus filed in accordance with this section. (*New.*) R. S. 1911, c. 39, ss. 140, 153, 158; 1912, c. 3, s. 27; 1914, c. 12, s. 18.

162.—(1) Every company, extra-provincial company, firm, broker, or other person, who, as owner or otherwise, offers in a course of continued and successive acts within the Province for subscription by or sale to the public any shares, debentures, or other securities of an extra-provincial company which is not registered under this Act, shall file with the Registrar:—

(a) Where a prospectus relating to the shares, debentures, or securities is issued, a copy of such prospectus, showing

the date of its issue and the Province, State, or country in which the company was incorporated, and signed in the presence of a witness by every director of the company; or

- (b) Where no such prospectus is issued, a statement containing the information required by sub-section (1) of section 90 to be set forth in a prospectus, and showing the Province, State, or country in which the company was incorporated, and signed and dated in the presence of a witness by every director of the company; and
- (c) In either case, an official copy of any license or other form of authority which the company is required to obtain under the laws of the Province, State, or country in which it was incorporated before it is permitted to offer for subscription or sale any of its shares, debentures, or other securities in that Province, State, or country; and
- (d) Such other information as the Registrar may require:

Provided that where clauses (a), (b), (c) and (d), as the case may be, have been complied with in respect of any company, it shall not be necessary for the same information to be again filed in respect of that company, but the onus of proving that the requirements of this section have been complied with shall lie upon the accused.

(2) Every company, extra-provincial company, firm, broker, or other person who fails to comply with this section shall be liable to a penalty not exceeding one hundred dollars for each offence.

(3) This section shall not apply where the shares, debentures, or other securities are listed on any stock exchange approved by the Lieutenant-Governor-in-Council and proof thereof has been filed with the Registrar.

Mining companies.

The Mineral Survey and Development Act, 1917, c. 41, as amended by 1920, c. 57, contains the following provisions applicable to mining companies:—

PART IV.

PROVISIONS FOR PROTECTION OF INVESTORS.

15. Each Resident Engineer shall, upon receiving notice of any advertised or solicited sale of shares in any company or in any claim or mine or mineral property whatsoever, upon statements or terms not in accordance with actual facts and condi-

tions, notify the Minister of Mines, who upon investigation may, if found necessary, give such notices, either personal or public, as may be necessary to prevent any injury to investors; and every notice given under this section by the Minister of Mines shall be absolutely privileged.

15A.—(1) When a joint stock company, other than a private company under the "Companies Act," acquires an interest in, or title to, or engages in work on any mining property situate in a Mineral Survey District, it shall forthwith notify the Resident Engineer of that District, and file with him full particulars thereof, and shall also file with him, as soon as it is issued, a copy of every prospectus or statement in lieu of prospectus which is required by the "Companies Act" to be filed with the Registrar of Joint Stock Companies.

(2) If a joint stock company makes default in complying with any requirement of this section, it shall be liable, on summary conviction, to a fine not exceeding twenty-five dollars for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

The practice under the above provisions is for the engineer to make a report to the Minister of Mines if the company's literature contains statement at variance with the facts. The Minister of Mines then draws the matter to the attention of the company's officials, and, in the event of non-compliance with instructions to cease from the sale of shares by misrepresentation, the full facts are made public.

CHAPTER XXI.

EXTRA-PROVINCIAL COMPANIES.

Statutory requirements.

In practically every province of Canada companies not locally incorporated are required to become licensed or registered before "carrying on business" in the province. In every province except Prince Edward Island, however, taking orders for, or buying or selling goods, wares, etc., by travellers or by correspondence, is not considered to be "carrying on business," provided that the company has no resident agent or representative nor any office or place of business in the province.

In New Brunswick no extra-provincial company is required to take out a license.

Dominion companies occupy a unique position. They have a status and powers entitling them to carry on business throughout Canada which no provincial legislature is entitled to abrogate. The existing legislation of Ontario and Manitoba, making the taking out of a license or becoming registered a condition precedent to doing business in the province and imposing a penalty for non-compliance with such requirements, has been held to be ultra vires. Doubtless the same is true of the legislation of Nova Scotia and British Columbia. In Prince Edward Island, New Brunswick, Quebec, Alberta and Saskatchewan, a Dominion company is not required to be licensed; but in Saskatchewan a Dominion company must be registered.

Application for license or registration.

Nova Scotia (Domestic, Dominion and Foreign Corporations Act, 1912, c. 15 as amended, ss. 21, 24, 25, 26).

All extra-provincial companies must file with the Registrar of Joint Stock Companies, Halifax, a statement setting out the information required by s. 24. The statement must be verified under oath of one of the principal officers. The form of statement is obtainable from the registrar. After the statement has been filed, the company must file an appointment of agent for service of process who must be resident in the province. The form of appointment is obtainable from the registrar. In January of each year the company must file with the registrar a statement verified under oath of its resident agent showing the information required by s. 26. The form of statement is obtainable from the registrar. On the filing of the statement the company is required to pay an annual registration fee based on its nominal capital (see Table of Fees, p. 368). The company must also deliver to the Provincial Treasurer the return required by the Provincial Revenue (Corporations) Act on or before April 1 in each year (see Returns, p. 317, below). For the annual tax payable under this Act see Taxation, p. 305, below.

New Brunswick (The Corporations Tax Act, 1920, c. 5, s. 11).

Dominion and other extra-provincial companies are not required to take out a license in order to carry on business. They are, however, under the above Act, required to pay annually on June 1 a tax

of \$100 or \$200 according as the capital stock does not exceed or does exceed \$100,000.

Prince Edward Island (The Taxation Act, 1920, c. 3, ss. 123, 126).

Every corporation on which a tax is imposed by s. 120, before it commences business, must file with the Provincial Treasurer, Charlottetown:—

- (a) A true copy of its charter and regulations;
- (b) An affidavit that the company is still in existence, etc.

Printed forms are obtainable from the Provincial Treasurer. The Provincial Treasurer issues a certificate to the corporation, which must be forthwith published by the corporation for two weeks in the Royal Gazette.

Quebec (R. S. Q., 1909, arts. 6098-6110; 6091-6097).

Extra-provincial companies (other than Dominion companies) must file with the Provincial Secretary, Quebec, P.Q.

- (a) Copy of charter or other deed constituting the company, certified by the officer having the custody of the original;

- (b) Power of attorney appointing an agent in the province and declaring where the principal office of the corporation is to be established;

- (c) Petition;

- (d) Affidavit that the company is so constituted as to carry out the obligations it may contract;

- (e) Copy of a resolution of the board of directors authorizing the presentation of the petition, certified under the seal of the company by the chairman and secretary;

(f) An affidavit by the secretary, sworn before a notary public, that the name of the company is not that of any other known company, nor liable to be confounded therewith, or otherwise on public grounds objectionable.

(g) A certificate from a clerk of a court of justice or other public officer attesting that the notary is a notary public and that his commission is still in force.

Copies of documents (b), (c) and (d) above are obtainable from the Provincial Secretary.

With the petition there must be remitted the fees payable for the license. The fees are based on the authorized capital (see Tables of Fees, p. 363).

All extra-provincial companies (including *Dominion companies*) must file the declaration required by arts. 6091 ff. within sixty days after commencing business or operations (see p. 24, above).

All extra-provincial corporations (including *Dominion companies*) are liable to the annual tax under the Companies Tax Act (see p. 306), and must on or before May 1 in each year file in duplicate with the Provincial Treasurer an annual statement (see p. 314).

Ontario (Extra-Provincial Corporations Act, R. S. O. c. 179).

Extra-provincial companies must file with the Provincial Secretary, Parliament Buildings, Toronto:—

- (a) Petition;
- (b) Affidavit of execution;
- (c) Affidavit verifying petition;
- (d) Copies of the incorporation papers (charter or memorandum and articles of association) certified by the public officer having the custody thereof;

(e) Power of attorney with consent of attorney to act and affidavit of execution;

(f) Certified copy of resolution of the board of directors authorizing the application for license.

A pamphlet is obtainable gratis from the department of the Provincial Secretary outlining the procedure. For forms of the documents required see Forms p. 269. The petition must be accompanied by the fees payable for the license, which are based on the amount of the company's capital to be used in Ontario (see Tables of Fees, p. 360). Extra-provincial companies are required to file an annual return on or before February 1st in each year (see p. 311). As to taxes payable by companies doing business in Ontario, see p. 307.

Manitoba (Part IV. of Manitoba Companies Act).

Extra-provincial companies must file with the Provincial Secretary, Winnipeg:—

(a) Certified copy of the charter, Act of incorporation or articles or memorandum of association;

(b) Declaration that the company is still in existence, etc.;

(c) Power of attorney to some person resident in the province.

Forms of declaration and power of attorney are obtainable from the Provincial Secretary. With the above must be remitted the fees payable for the license. The fees are based on the authorized capital (see Tables of Fees, p. 364).

Extra-provincial companies are required to file an annual return on or before February 8 in each year (see p. 316).

As to taxes payable by extra-provincial companies, see p. 308.

Saskatchewan (Companies Act, ss. 25-30).

Every extra-provincial company is required within thirty days after commencing business in the province, to be registered, and (unless a Dominion company) must also take out a license. The following documents are required to be filed with the Registrar of Joint Stock Companies at Regina:—

- (a) Certified copy of the charter and by-laws;
- (b) Petition in form B in the schedule to the Act;
- (c) Statutory declaration of the president, vice-president, secretary or manager in form C in the schedule to the Act;

- (d) Balance sheet or statement containing the particulars required to be given in the annual statement under s. 37 of the Act (see form D in the schedule to the Act);

- (e) Executed power of attorney in form approved by the registrar empowering some person residing in one of the cities or towns of Saskatchewan to receive service of process.

Forms of documents required are obtainable from the registrar. With the application must be remitted the fees payable for registration and license. The fees are based on the authorized capital (see Table of Fees, p. 370).

The license expires on December 31 and must be renewed annually.

Dominion companies are not required to take out a license, but if carrying on business in Saskatchewan must, not later than January 1 in each year, file with the registrar a statement in writing (Form E) accompanied by a fee of \$5.

Annual fees are payable under the Corporations Taxation Act (see Table of Fees, p. 369).

Extra-provincial corporations are required, under s. 20 of the Corporations Taxation Act, to file a summary on or before May 1 in each year (see p. 321).

Alberta (Foreign Companies Ordinance, c. 14, 1903).

Extra-provincial companies (other than Dominion companies) are required to be registered. The following documents are required to be filed with the Registrar of Companies, Edmonton:—

(a) True copy of charter and regulations;

(b) Affidavit or statutory declaration that the company is still in existence and authorized to transact business;

(c) Copy of the last balance sheet or statement containing information required to be given in the annual statement made under section 8 of the Foreign Companies Ordinance;

(d) A power of attorney appointing some person resident in the province to accept service of process.

Fees based on the authorized capital must be remitted with the application (see Tables of Fees, p. 372).

Forms of documents required are obtainable from the registrar.

An annual summary is required to be filed with the registrar on or before March 1 (s. 8).

As to taxation under the Corporations Taxation Act, see p. 308.

British Columbia (Companies Act, Part VIII.).

Every extra-provincial company is required to be registered. The documents required to be filed

and the information required to be given are set out in Form 19 in the second schedule to the Act. The form, which is obtainable from the registrar, must be filed with the registrar, at Victoria.

Fees based on the authorized capital must be remitted with the application (see Tables of Fees, p. 373).

A number of duties and obligations are imposed by ss. 150-157 of the Act. In particular a report according to Form 21 in the second schedule to the Act must be filed with the registrar on or before March 1 in each year. The form is obtainable from the registrar. As to taxation, see p. 309.

Holding of land by extra-provincial companies.

Ontario (Mortmain and Charitable Uses Act, R. S. O. 1914, c. 105, amended 1914, c. 2, s. 4, 1921, c. 46; Ontario Companies Act Amendment Act, 1921, c. 58, s. 3).

The Act first above mentioned is a general Act prohibiting companies from acquiring and holding land unless licensed to do so. Copies of the regulations showing the requirements for obtaining licenses and fees payable are obtainable from the Provincial Secretary. For fees, see Table of Fees, p. 361.

Companies which take out a license under the Extra-provincial Corporations Act (see p. 290, above) enjoy the right of acquiring and holding land along with the general right to do business in the province. Companies which for any reason are not required to take out a license under the Extra-provincial Corporations Act must take out the special license under the Mortmain and Charitable Uses Act (called a license in mortmain) empowering them to

acquire, hold and dispose of land. Thus Dominion companies must take out a license in mortmain in order to hold land in Ontario.

It should also be noted that section 135 of the Ontario Companies Act (as amended 1921) requiring the filing of a return by every corporation wheresoever incorporated doing business in Ontario (excepting corporations taxable under the Corporations Tax Act) provides as follows:—

- (8) No registrar of deeds or land titles officer shall register any instrument made by or in favor of, or purporting to confer any interest in land, whether by way of caution, certificate or otherwise, upon any corporation regarding which he shall have received notice in writing from the Provincial Secretary that such corporation is in arrears in respect to any such statement or return or any tax or fee payable with such statement or return.

Manitoba (Companies Act, ss. 112, 119, 127).

Unlicensed extra-provincial companies are prohibited from holding or dealing in land (s. 119). A company which takes out the ordinary license to do business under Part IV. is to have the same powers to hold and deal with real estate as if the company had been incorporated under Part I. of the Act with power to carry on the business and powers embraced in the license (s. 112). Companies which do not take out the ordinary license may secure a special license for dealing in real estate (s. 127).

Saskatchewan (Companies Act, s. 27 (3)).

An extra-provincial company which has obtained a license from the registrar may, subject to the provisions of its charter, carry on business in all respects as if it had been incorporated under the Act. The only companies, therefore, that might find themselves in difficulty in the matter of holding land would be unlicensed companies.

Alberta (Foreign Companies Ordinance, 1903, s. 11; Corporations Taxation Act, s. 22).

An extra-provincial corporation registered under the ordinance subject to its charter and regulations may acquire, hold and deal with lands (s. 11). The Foreign Companies Ordinance does not apply to Dominion companies. The Corporations Taxation Act provides that no registrar of titles is to register any instrument made in favour of, or purporting to confer any interest in, land, whether by way of caveat or otherwise, upon any company, until he is satisfied that it is not in arrear for any tax or fee imposed by the Act (s. 22).

British Columbia (Companies Act, s. 158).

An extra-provincial company not registered as required by Part VIII. is not to be capable of acquiring or holding land or any interest therein in the province or registering any title thereto under the Land Registry Act (s. 158 (1)). The section does not apply to Dominion companies (s. 158 (4)).

Quebec (art. 6104).

An extra-provincial corporation which receives a license under section IV. may, subject to the limitations and conditions of the license and of the laws of the province, and also subject to the provisions of its charter, acquire, hold, etc., immovable property in the province, to the same extent as if incorporated by letters patent of the Lieutenant-Governor with power to carry on the business and exercise the powers embraced in the license.

Dominion companies are not comprised in the definition of "extra-provincial corporations." Special or general licenses to hold real estate may be

secured by Dominion, British and U. S. companies under 8 Geo. V. c. 77 (1918), if they are not able to rely on Article 6112, under which these companies are empowered to acquire and hold land for the prosecution of their business only.

New Brunswick (Corporations Tax Act, 1920, s. 16).

An extra-provincial corporation paying a tax under the Act may, subject to the provisions of its own charter, Act of incorporation or other creating instrument, acquire, hold, etc., real estate in the province to the same extent and for the same purposes and subject to the same conditions and limitations as if it had been incorporated under chapter 85 of the Consolidated Statutes, 1903.

CHAPTER XXII.

TAXATION.

In addition to the taxation imposed on companies by the various provinces (which is dealt with below) there are two important Federal taxes to which companies are liable, viz., the Income War Tax and the Sales Tax.

DOMINION INCOME TAX.

Dominion Income War Tax Act (1917, c. 28, as amended).

Rate of tax on companies.

Companies pay a normal tax of 10 per cent. on their income exceeding \$2,000. If the taxable income is \$5,000 or over, they pay an additional tax of 5 per cent. of the amount of such normal tax, making a total of 10½ per cent.

What is income?

“Income” means the annual net profit or gain received whether by way of wages, salary, fees, emoluments, or return from any investment, business, trade or calling, or from any other source, whether derived from sources within Canada or elsewhere.

Exemptions from income tax.

1. Interest on any Dominion War Bonds issued free from income tax.
2. Dividends received from corporations subject to the Income War Tax Act.

3. The income of companies, the business and assets of which are carried on and situate entirely outside of Canada.

4. Legacies, gifts and proceeds of life insurance policies (but not money earned by the investment of these). A taxpayer is also entitled to exemption on money made by speculation outside the ordinary course of his business. A corporation obviously will not ordinarily be in receipt of such items so as to claim exemption therefor.

Deductions from income on account of expenditure.

1. Ordinary expenditure for the purpose of the business.

2. Interest on money borrowed, including interest on bond issues of the company.

3. Taxes, insurance, repairs and depreciation on buildings.

4. Carrying charges on securities, not exceeding income therefrom.

No deduction is allowed for subscriptions to charity, nor may loss on a "side-line" be deducted from the profits of the chief business.

Deductions from tax.

After the amount of the tax has been determined (all proper deductions having been made), there may be deducted from it, income tax paid to another country on income derived from that country, if this deduction does not exceed the tax that would be payable in Canada on the particular income on which the tax has been paid elsewhere; provided that in the case of a foreign country this deduction is not allowed unless such country allows a similar

credit to persons receiving income from Canada. The United States, among other countries, allows such a credit.

Depreciation.

It is in the discretion of the Finance Minister to say what "reasonable" depreciation is. In practice the following percentages are allowed:

2 per cent. on stone or concrete buildings.

2½ per cent. on brick buildings.

5 per cent. on wooden buildings.

5 to 10 per cent. on machinery.

10 per cent. on office furniture and fixtures.

As regards automobiles, the practice is to allow (in proportion to the extent of the use in the business); 1st year's use—25 per cent. of cost price; 2nd year's use—15 per cent. of cost price; 3rd and all subsequent years—10 per cent. of cost price.

Undivided profits and stock dividends.

It is to be noted that when a company does not divide its profits, the individual shareholders may be taxed on their proportion of such undivided profits, if the Finance Minister considers that their amount exceeds the reasonable requirements of the business and that their accumulation is intended to evade the law. Stock dividends are subject to payment of income tax thereon by the recipient in the same manner as dividends paid in cash.

Returns.

The following returns must be filed. Forms are obtainable from the local Inspector of Taxation or from any post office.

1. Form T².

- (a) What to include—income for preceding year.
- (b) Date—30th April.
- (c) How made—in triplicate, one copy to be kept by taxpayer.
- (d) Where to be filed—two copies with local Inspector of Taxation.

2. Form T⁴.

- (a) What to include—all employees paid \$1,000 a year or more.
- (b) Date—31st March.
- (c) How made—in triplicate, one copy to be kept by taxpayer.
- (d) Where to be filed—two copies with Commissioner of Taxation, Ottawa.

3. Form T⁵.

- (a) What to include—particulars of shareholders and dividends.
- (b) Date—31st March.
- (c) How made—in triplicate, one copy to be kept by taxpayer.
- (d) Where to be filed—two copies with Commissioner of Taxation, Ottawa.

1. As regards Form T², it is to be noted that when a company's fiscal year does not coincide with the calendar year, a return must be made for the fiscal year that ended within the calendar year under report. Companies must not wait for forms to be sent and a demand for the return to be made. The onus is put upon individuals and companies alike to secure the forms and send them in to the inspector by the date named. With the return must be sent

one-quarter of the amount of the tax as estimated by the taxpayer.

2. Form T⁴ must show all employees who are paid at the rate of \$1,000 a year or more, as well as all fees paid to company officials, directors, etc.

3. Form T⁵ must give the names and addresses of all shareholders with particulars of all dividends and bonuses, etc., paid to them.

If for any valid reason a return cannot be filed within the time named, application should be made to the District Inspector of Taxation who may grant an extension.

The company must itself calculate the amount of its tax and pay one-quarter of it when it files the return. The rest is payable later in three two-monthly instalments, with interest at six per cent. Payment, not made in cash, must be by certified cheque in favour of the Receiver-General. If the company puts the figure too low it becomes automatically liable to penalties.

Notice from taxation officials.

If a company's figures are accepted, the company will be notified by the Local Inspector. If the Department thinks the income has been understated or that too little has been paid, demand will be made for the balance (with penalties).

Appeal.

In case of dissatisfaction with the official assessment, appeal may be made (within twenty days of the posting of such notice of assessment) first to a Board of Referees and finally to the Exchequer Court of Canada. A special form for this purpose (No. 11) is obtainable from any local inspector. The

Board of Referees may increase the official assessment.

SALES TAX.

Special War Revenue Act (1915, c. 8, as amended, 1920, c. 71, 1921, c. 50, ss. 19BB, 19BBB; 1922).

There is a Dominion tax imposed on sales of goods by manufacturers, and wholesalers or jobbers, which is payable by the purchaser at the time of such sale to the manufacturer or wholesaler or jobber and by the manufacturer or wholesaler or jobber to the Department of Customs and Excise.

Rates.

1. Sales by manufacturers to wholesalers— $2\frac{1}{4}$ per cent.

2. Sales by wholesalers or jobbers to retailers or consumers— $2\frac{1}{4}$ per cent.

3. Sales by manufacturers direct to retailers or consumers— $4\frac{1}{2}$ per cent.

4. Importations by manufacturers or wholesalers— $3\frac{3}{4}$ per cent. on the duty paid value.

5. Importations by retailers or consumers—6 per cent. on the duty paid value.

Exemptions.

There is a long and miscellaneous list of articles excepted from this tax, ranging all the way from various food products to fuel and material for the construction, equipment and repair of ships.

Licenses.

Every manufacturer and wholesaler who sells articles subject to the Sales Tax must every year,

before the 31st March, take out a license (fee \$2.00), application forms for which and information regarding which may be obtained from any Collector of Customs and Excise. This license must be distinguished from the so-called manufacturer's license which must be taken out (at an annual charge of \$2.00) by the manufacturers of playing cards and of wines. A manufacturer, wholesaler or jobber having more than one factory, branch office, warehouse, sales office or other place of business, is not required to take out more than one sales tax license, though each factory, warehouse, etc., must have on file a certified copy of such license. Applications for certified copies should be made to the Collector of Customs and Excise at the time when the original license is applied for.

Exportations.

When goods, not specifically exempted from the sales tax, are exported from Canada to the United States, there should be endorsed on the invoices a statement to the effect that the goods are subject to a sales tax of $2\frac{1}{4}$ per cent. when sold in Canada to wholesalers, but that the tax is not applicable on export shipments. Unless this is done, the United States Customs will not only charge duty on an additional value of $2\frac{1}{4}$ per cent. on account of the $2\frac{1}{4}$ per cent. sales tax on sales to wholesalers, but will also collect from the U. S. importer a penalty of $2\frac{1}{4}$ per cent. In the case of any tax paid on materials used, wrought into or attached to goods exported, there is provision for a drawback of 99 per cent. of the amount of the tax.

PROVINCIAL TAXATION.

Prince Edward Island.

By the Taxation Act, c. 3, of 1920, taxes are imposed upon certain classes of companies doing business in the province.

Nova Scotia.

(a) Domestic, Dominion and Foreign Corporations Act, 2 Geo. V. c. 15, as amended.

Annual registration fee is payable in January. For amount see Table of Fees.

(b) Provincial Revenue (Corporations) Act, c. 3, 1921.

Apart from taxes of specified amounts on banks, trust, loan, railway companies, etc., every incorporated company that carries on any part of its business in Nova Scotia and has a paid-up capital of \$25,000 or more, must pay an annual tax of 1/10th of 1 per cent. of the paid-up capital, on such part thereof as is employed in Nova Scotia, the minimum to be \$25.00. The tax is due on the 1st January but not payable until the 1st June of each year (ss. 15, 16). Any company which is liable for any other tax under this Act may deduct the amount of such tax from the amount payable under this section (s. 15), except in the case of a company which carries on in Nova Scotia any part of its business in addition to that in respect of which such other tax is payable under this Act.

New Brunswick.

The Corporation Tax Act (1920, c. 5).

Extra-provincial companies, including Dominion companies, must pay an annual tax of \$100 or \$200

according as the capital stock does not exceed or does exceed \$100,000. Under section 19, when the company is carrying on business outside New Brunswick, a reduction may be made, based on the nature and importance to be carried on in New Brunswick and the amount of capital to be employed therein (s. 11).

Sections 4 to 10 impose taxes of varying amounts on certain specified companies, such as insurance, trust and loan, building, express, telegraph companies, etc. No tax, however, is levied on ordinary industrial companies incorporated in New Brunswick.

Quebec.

The following apply to every incorporated company doing business in Quebec.

(a) Companies Tax Act, R. S. C., 1909, Article 1347, as amended.

(1) Annual tax of one-tenth of one per cent. on paid-up capital with power to make a reduction, as to the Governor-in-Council may seem just, where head office or the factories, etc., representing the greater part of its corporate assets are outside.

(2) Additional tax of \$30 for each place of business, factory or work-shop in Montreal or Quebec, and \$15 in any other place, which shall be reduced by half in the case of a company with paid-up capital less than \$25,000.

(b) R. S. Q. (1909), Articles 1360-1373.

Stamp tax of 2 cents for every \$100 or fraction thereof of the par value of all shares, bonds, debentures,

tures or debenture stock sold, transferred or assigned; but such tax is not payable on the first issue of such shares, bonds, etc.

Ontario.

(a) R. S. O. (1914), c. 27, as amended 1920.

Stamp tax of 3 cents on every sale transfer or assignment of shares or debenture stock of \$100 or fraction thereof of the par value, payable by the transferor in money or stamps; the first issue, however, not to be subject to such tax. Annual returns must be made by the company to the Provincial Treasurer showing every such transfer, sale, etc., and the amount of tax collected (see page 312).

(b) Ontario Assessment Act, R. S. O. 1914), c. 195.
1. s. 10.

Companies doing business in Ontario are assessed under this Act for a sum to be called "business assessment" on the basis of the assessed value of the land occupied or used by them. The rate varies considerably; a manufacturer is assessed for a sum equal to 60 per cent. of the assessed value, a miller 35 per cent., etc., etc.

2. s. 11 (1)b.

In addition to "business assessment" under section 10, as above, a company is also assessed in respect of any income not derived from the business in respect of which it is assessable under that section.

The two last-mentioned taxes are, of course, collected by the various municipalities, not by the central Provincial authorities.

Manitoba.

Corporation Taxation Act, R. S. M. (1913), c. 191, as amended 1921.

This Act imposes taxes of varying amounts on banks and trust, loan, railway and certain other companies.

NOTE.—This Act imposes a tax of 2 per cent. on net profits for the year 1921. An Income Tax Act was introduced in 1922 imposing a tax of 4 per cent. on income exceeding \$2,000. The Act was not passed, but doubtless similar legislation will be introduced.

Saskatchewan.

Corporations Taxation Act, R. S. S. (1920), c. 31, s. 18.

For the taxes payable under the Corporations Taxation Act, section 18, see Table of Fees, p. 369).

Companies Act, R. S. S. (1920), c. 76; amended 1922.

(a) Registration Fees (s. 30). A fee is payable by all companies upon registration, graded according to the amount of capital.

(b) License Fees (s. 27). An annual license fee is payable by all companies other than Dominion companies. See Table of Fees, p. 370. Dominion companies carrying on business in Saskatchewan must file with the registrar a statement in writing (Form E) not later than January 1 in each year accompanied by a fee of \$5.

Alberta.

Corporations Taxation Act, (1920), c. 31.

A company which transacts business in Alberta and is not otherwise taxed under the Act, must pay

an annual tax of 40 cents for every \$1,000 of its authorized capital, but not exceeding \$500. Among companies which are subject to special taxes under the Act and which, therefore, do not come under this section, are insurance, loan, land, trust, street railway, telegraph, telephone, gas, electric light, and express and grain elevator companies.

British Columbia.

Taxation Act, c. 222, R. S. C. (1911), as amended.

Annual tax of 1 per cent. on assessed value of real property other than than wild land, coal or timber land. A discount of 10 per cent is allowed on current year's tax if paid before June 30th, 1921.

Income and Personal Property Taxation Act (1921), c. 48.

(1) Annual tax of 1 per cent. on assessed value of personal property.

(2) A graded income tax at rates rising from 1 per cent. on net income not exceeding \$2,500 to 15 per cent. on the amount by which the net income exceeds \$19,500 and does not exceed \$25,700. Where the net income exceeds \$25,700 the rate is 10 per cent. on *all* the net income.

CHAPTER XXIII.

RETURNS AND DOCUMENTS TO BE FILED.

Under every Act the company is required to file an annual return, known as the annual summary, annual report, etc. The return must be filed with the Provincial Secretary or Registrar of Companies on or before a specified date in each year and must be accompanied by the prescribed filing fee. A duplicate is required to be kept posted up at the head office or available for inspection at the head office. In addition to the annual return, various notices, documents, by-laws, reports, etc., are required under the different Acts to be filed with the Provincial Secretary or Registrar. Details of the regulations in the various jurisdictions are as follows:—

Dominion.

Annual summary (s. 106)—Dominion Companies.

1. What to include—information mentioned in section, as of 31st March preceding.
2. Date—1st June.
3. Where to be filed—Secretary of State, Ottawa.
4. How made—in duplicate; signed by the President and Manager, or if these are the same person, by President and Secretary, and verified by their affidavits. An affidavit must also be filed proving that the copies are duplicates.
5. Forms—obtainable from the Secretary of State.

6. Fee on filing — from \$5.00 for a \$200,000 company to \$25 for a \$1,000,000 company. See Tables of Fees, p. 356.

Additional returns.

The undermentioned sections of the Act require the filing with the Secretary of State of documents as indicated.

Section 43 —Copy of prospectus (on or before date of publication).

“ 43C—Statement in lieu of prospectus (before allotment of shares or debentures).

“ 49A—All mortgages and charges on company's property (within 30 days after creation; extension of time if outside Canada).

“ 69B—Appointment of receiver or manager —(within 14 days)—to be given by person obtaining the order.

“ 69C—Accounts of receiver or manager (half yearly and on ceasing to act).

“ 76 —Certified copy of by-law making change in number of directors or in chief place of business.

Ontario.

(a) Companies Act.

Annual summary.

Section 135—Applies to all companies.

1. What to include—information mentioned in section as of 31st December.
2. Date of filing—1st February.
3. Where to be filed—Provincial Secretary.

4. How made—in duplicate, verified by affidavit of president and secretary or two other officers.
5. Fees ranging from \$5.00 to \$30 according to the capitalization must be remitted with return. (See Tables of Fees).
6. Forms obtainable from Provincial Secretary, Parliament Buildings, Toronto.

(b) Corporations Tax Act (s. 12 (a)), applying to all companies.

Return of transfers of shares, etc.

1. What to include—information as to sale, transfer or assignment of shares or debenture stock.
2. Date of filing—1st February.
3. Where to be filed—Provincial Secretary.
4. How made—verified by affidavit of president or secretary, or either of them and one director, or two directors. (See section).
5. Forms—obtainable from Assistant Provincial Secretary, Toronto.

(c) Ontario Assessment Act, c. 195, R. S. O. 1914, as amended 1916-18-19-20.

The 1920 amendment made dividends derived from shares in manufacturing and mercantile corporations taxable in the hands of shareholders. Under section 19 (1) companies whose dividends are thus made liable to taxation against the shareholders as income must, within 30 days of receipt of notice from the assessor, file a return, as of the 31st December preceding, verified by affidavit of some officer setting forth,

1. The names of all shareholders resident in the municipality in question, or who ought to be assessed for their income therein;

2. The amount of stock held by each such shareholder;

3. The amount of dividends and bonuses paid to each in the preceding year.

Additional returns.

The undermentioned sections of the Companies Act require the filing with the Provincial Secretary of documents as indicated.

Section 90—Copy of by-law varying the number of directors or changing the location of the head office.

“ 102—Statement in lieu of prospectus.

“ 103—Copy of prospectus (before it is issued).

“ 114—Statutory declaration of compliance with Part VIII. (public companies).

“ 116—Return of allotments by public companies (within two months of allotment) together with original of contract under which shares issued for consideration other than cash.

“ 117—Certified copy of statutory report by public companies (forthwith after sending to shareholders).

“ 136—Return of changes in directors by all companies forthwith.

“ 149—Verified copy of by-law authorizing issue of shares at a discount (transmitted by registered post within 24 hours or filed within 5 days).

“ 202—Return by liquidator winding up companies (voluntary winding-up).

Quebec.

Annual summary (art. 6031)—Quebec companies.

1. What to include—information mentioned in section, as of June 30th, preceding.
2. Date of filing—1st September.
3. Where to be filed—Department of Provincial Secretary.
4. How made—in duplicate.
5. Forms—obtainable from Provincial Secretary.
6. Fee on filing—\$10.

Returns under Companies Tax Act, R. S. Q. 1909.

Article 1350 (applies to all extra-provincial companies, Dominion or otherwise).

1. What to include—information as per form 47F.
2. Date—on day business is commenced and thereafter annually on 1st May.
3. How made—in duplicate, verified by affidavit of president, vice-president or other officer.
4. Where to be filed—Provincial Treasurer, Quebec, P.Q.
5. Forms—obtainable from Provincial Treasurer.

Returns of transfers of shares, etc.

Article 1368a R. S. Q. 1909, and amendments (applies to all companies, Quebec and extra-provincial, having an office, agency or branch in the province).

1. What to include—sale, transfer, etc., of shares, bonds, etc., as per Form 62A.
2. Date—1st July.

3. How made—verified by affidavit of president or secretary or by chief agent of extra-provincial company named in power of attorney.
4. Where to be filed—Provincial Treasurer, Quebec, P.Q.
5. Forms—obtainable from Provincial Treasurer.

Additional returns, notices, etc.

Art. 5986—Contract for payment for shares otherwise than in cash at or before issue of shares or within 30 days thereof.

“ 5989—Notice when purchase of preferred stock reaches 10 per cent. of capital stock, within 30 days of time such proportion is reached.

“ 5996—Copy of by-law for increase or reduction of capital stock, within 6 months of being approved by shareholders.

“ 6016—Copy of by-law to increase or decrease number of directors or to change situation of head office.

Manitoba.

Companies Act.

Annual statement (ss. 80-86).

1. What to include—information mentioned in s. 80, as of 31st December preceding.
2. Date of filing—8th February.
3. Where filed—Provincial Secretary, Winnipeg.
4. How made—in duplicate, verified by affidavit of president and secretary or two directors.

5. Forms—obtainable from Provincial Secretary.
6. Fees—\$1.00 or \$2.00 as authorized capital does not or does exceed \$100,000.

Note.—Land companies must show, in addition, number of acres held and when purchased (s. 81).

Annual return (s. 120)—extra-provincial companies licensed under Part IV.).

1. What to include—information in section 80.
2. Date of filing—8th February.
3. Where filed—Provincial Secretary, Winnipeg.
4. Forms—obtainable from Provincial Secretary.
5. Fees—\$5.00 or \$10.00 as capital does not or does exceed \$100,000.

Corporations Taxation Act, R. S. M., c. 191, s. 8.

An annual statement must be filed by all corporations carrying on business in Manitoba. The form is obtainable from the Superintendent of Corporation Taxes at Winnipeg, with whom it must be filed on or before April 1, accompanied by the tax payable (see p. 308, above).

Sale of Shares Act, R. S. M., c. 175, s. 12.

Every company holding a certificate under the Act must file every twelve months with the Public Utilities Commissioner, Winnipeg, a statement accompanied by fee of \$2.50. Forms are obtainable from the Commissioner.

Additional notices, returns, etc.

The undermentioned sections of the Companies Act require the filing with the Provincial Secretary of documents as indicated.

- Section 29A 1. Certified copy of by-laws and list of directors, etc. (within 30 days after company organized).
- “ 2. Notice of any change in business address of company (within 30 days).
- “ 45 Certified copy of by-law authorizing issue of shares at a discount.
- “ 71 Duplicate original of mortgage, change, etc., made to secure bonds, etc., to be filed forthwith.
- “ 71A Affidavit respecting floating charges (to be filed in County Court).

Nova Scotia.

(a) Domestic, Dominion and Foreign Corporations Act, 1912, as amended 1915-16-19-20 (s. 26).

(Applies to all companies whether Nova Scotia or extra-provincial companies).

1. What to include—name of directors and officers, amount of stock nominal, subscribed or issued and paid up.
2. Date—month of January.
3. How to be made—verified by affidavit of recognized resident agent.
4. Where to be filed—Registrar of Joint Stock Companies, Halifax.
5. Fees—to be paid when return is filed, as required by section 28.

(b) Provincial Revenue (Corporations) Act, c. 3, Statutes of 1921.

Section 18 requires an annual statement by companies with \$25,000 or more paid-up capital.

1. What to include—information required as prescribed by Governor-in-Council.

2. Date of filing—1st April.
3. Where to be filed—Provincial Treasurer.
4. How to be made—Verified by affidavits of president or vice-president, and manager, or as required by Provincial Treasurer.
5. Forms—obtainable from Provincial Treasurer.

Notices and returns under Companies Act, 1921,

Section 17(6)—Certified copy of order confirming alteration of memorandum of association—within 15 days of date of order.

- “ 23 —Original and copy of memorandum and articles.
- “ 40 —Memorandum of particulars required on reduction of paid-up capital.
- “ 42 —Notice of consolidation, division, conversion, etc., of share capital.
- “ 44 —Notice of increase of share capital beyond registered capital—within 15 days of passing or confirmation of resolution.
- “ 45 —Copy of order confirming re-organization of share-capital—within 7 days of making of order.
- “ 46(3)—Copy of Court order permitting redemption of preference shares and reduction of share capital.
- “ 70 —Copy of every special resolution—within 15 days of confirmation.
- “ 74 —Notice of any change among directors or managers.
- “ 79(2)—Copy of every prospectus on or before date of publication.

Section 82(1)—Contract for issue of shares otherwise than subject to payment in cash.

“ 82(2)—Office copy of Court order to file contract in special cases.

“ 85 —Copy of any instrument creating any mortgage or charge on company's property—within 21 days of creation (or in case of mortgage outside N. S.—within 21 days of time, mortgage, if posted with due diligence, would be received in N. S.).

“ 86(1)—Notice of appointment of receiver or manager — within seven days of order or appointment.

“ 86(3)—Abstract of receiver's receipts and payments — half-yearly and on ceasing to act.

“ 88(6)—Notice of situation of office where branch register of debenture-holders is kept—and of any change in such situation or of discontinuance of office.

“ 99 —Notice whether or not company is carrying on business—within one month of registrar's inquiry.

New Brunswick.

(a) Companies Act, 1916.

Section 117.—Annual summary.

1. What to include—information mentioned in section.
2. Date of filing—whenever written request is made.

3. Where to be filed—Provincial Secretary-Treasurer.
4. How made—verified in manner satisfactory to Provincial Secretary-Treasurer.

(b) Corporations Tax Act, 1920.

A return must be made when the capital stock is changed, as the annual fees are based on this amount. The annual fees—\$100, when the capital stock does not exceed \$100,000, and \$200 when the stock exceeds \$100,000—are payable on the 1st June, in advance. (Sections 11 and 12).

Under section 19, the Lieutenant-Governor-in-Council may reduce the tax on an extra-provincial company if the importance of the business outside the province in comparison with the business within the province warrants it. Returns, as required by the Provincial Secretary-Treasurer, must be made by a company seeking such reduction.

Additional notices and returns.

Section 85(2)—Copy of by-law changing company's head office.

“ 85(3)—Copy of by-law (in certain cases) increasing or decreasing number of directors.

Saskatchewan.

All companies.

Annual summary (to be filed by all companies registered in Saskatchewan wheresoever incorporated).

(a) Companies Act, R. S. S., 1920, c. 76, s. 37.

1. What to include—information mentioned in section 37.
2. Date—1st March.

3. Where filed—Registrar of Joint Stock Companies, Regina.
4. Forms—obtainable from registrar.
5. Annual license fees based on capital must be remitted with return.

(b) Corporations Taxation Act, R. S. S. 1920, c. 31, s. 20.

1. What to include—name, kind of business and such other information as is required by registrar.
2. Date—1st May.
3. How made—verified by affidavit of president and manager or other officers.
4. Forms obtainable from registrar.

Dominion companies.

Companies Act (R. S. S., 1920, c. 76, s. 27 (7)).

A statement in writing (form E in the schedule to the Act) must be filed with the registrar on or before January 1 in each year accompanied by a fee of \$5.00.

Companies holding certificate under Sale of Shares Act.

A statement must be filed with the Local Government Board, Regina, every twelve months and not later than thirty days after date of annual meeting. The form is obtainable from the Board. Filing fee, \$5.00.

Other returns and notices under Companies Act.

Section 13(6)—Certified copy of Court order confirming alteration of memorandum; also copy of memorandum as changed—within 15 days from date of order.

Section 24(1)—Certified copy (in case of extra-provincial company) of special resolution, supplementary letters patent, Court order, making any change in name, objects, memorandum or articles.

“ 31 —Notice as to being still in business
—within one month of registrar’s inquiry.

“ 48 —Notice of rectification of register.

“ 53 —Notice of consolidation, division, conversion, etc., of share capital.

“ 55 —Notice of increase of share capital beyond registered amount—within 15 days of passing of resolution.

“ 56 —Copy of Court order confirming special resolution modifying memorandum so as to reorganize share capital—within 7 days after making of order.

“ 62(1)—Copy of Court order confirming reduction of share capital, also minute approved by Court showing amount of share capital, etc.

“ 64 —Court order (in case of extra-provincial company) confirming, or certificate of proper authority evidencing reduction of share capital—within two months of reduction becoming effective.

“ 71 —Notice of situation and any change in situation of registered office.

“ 81 —Copy of any special and extraordinary resolution—within 15 days from confirmation or passing.

- Section 84 —Copy of every prospectus, on or before date of publication.
- “ 88 —Consent to act as director—before publication of prospectus.
- “ 96(a)—Return of number and amount of shares in any allotment, also names, etc., of allottees, and amount paid or payable on each share—within one month after allotment.
- “ 96(b)—Written contract, in case of shares allotted in whole or in part for consideration other than cash—within one month.
- “ 97 —Certified copy (in case of company restrained from offering shares to public) of resolution empowering company to offer shares.
- “ 109 —Copy of register of names, addresses and occupations of directors and managers.
- “ 120 —Statutory declaration before commencing business.

Alberta.

(a) The Companies Ordinance, 1901.

Annual summary and list of shares (to be filed by all Alberta companies).

1. What to contain—information mentioned in section 31, as per Form E.
2. Date of filing — within 3 weeks of first ordinary general meeting.
3. Where to be filed—registrar of joint stock companies.

4. How to be made—signed by manager or secretary of company.
 5. Forms—obtainable from registrar.
- (b) Foreign Companies Ordinance, 1903, c. 14, s. 8.
- Annual summary—to be filed by all extra-provincial companies except Dominion companies.
1. What to include—information mentioned in section, as of 31st December.
 2. Date—1st March.
 3. How made—verified by affidavit of president and secretary or either of them and one director, or by two directors.
 4. Where filed—registrar of joint stock companies, Edmonton.
 5. Fee on filing—\$5.00.
 6. Forms obtainable from registrar.
- (c) Corporations Taxation Act (1907), c. 19, s. 8, amended, applies to every company doing business in Alberta.
1. What to include—information mentioned in section, made up to 31st December preceding.
 2. Date—30th June.
 3. How made—verified by affidavit of president or other officer.
 4. Where filed—registrar of joint stock companies, Edmonton.
 5. Fee—\$5.00.
 6. Forms obtainable from registrar.
- (d) Sale of Shares Act (1916), c. 8.

Companies holding a certificate under the above Act must file with the Board of Public Utility Com-

missioners at Edmonton every twelve months a statement in the prescribed form obtainable from the Board. Filing fee, \$2.50.

Further Returns and Notices.

Section 32 —Notice of consolidation, re-division, etc., of capital.

“ 39 —Notice of increase in capital beyond the registered amount, within 15 days of passing of resolution.

“ 41 —Notice of rectification of register.

“ 55 —Signed copy of every prospectus (before date of publication).

“ 83 —Copy of Court order confirming reduction of capital, together with minute approved by Court showing amount, division, etc., of capital as reduced.

“ 90 —Copy of Court order altering objects of company, together with copy of memorandum as altered (within fifteen days from date of order).

“ 92 —Special resolution changing name of company, also other evidence mentioned in section.

“ 100 —Notice of situation, and of any change in situation, of registered office.

“ 104 —Notice of change of directors or managers.

“ 107 —Statutory declaration by secretary or director as to certain conditions being complied with, before commencing business.

“ 110A—Return of allotments—within one month after each allotment.

Section 110B—Contract, in case of shares, issued otherwise than for cash, stating allottee's title—within one month.

“ 117 —Copy of statutory report—“ forth-with ” after being forwarded to members.

“ 122 —Copy of any special resolution—within 15 days after confirmation.

British Columbia.

Companies Act, 1921.

(a) Annual report by British Columbia companies (sec. 122).

1. What to include—information mentioned in section.
2. Date of filing—within two weeks of annual general meeting.
3. Where to file—registrar of joint stock companies.
4. How made—signed by a director, manager, or other officer.
5. Forms—obtainable from registrar.
6. Fee—\$1.00.

(b) Annual report by extra-provincial companies (s. 156).

1. What to include—information mentioned in section, as of 31st December preceding.
2. Date of filing—1st March.
3. Where to file—registrar of joint stock companies.
4. How made—certified by director or other officer.
5. Forms—obtainable from registrar.
6. Fee—\$1.00.

(c) Taxation Act, 1911.

Annual return by special group of companies such as insurance, trust and loan, telegraph, etc. (ss. 136, 142).

1. What to include—information mentioned in sections.
2. Date of filing—1st September.
3. Where to be filed — Assessor of Victoria Assessment District.
4. How to be made—signed by president, director, manager, etc.
5. Forms—obtainable from assessor.

(In addition, section 143 provides that all corporations assessed under Part IV. shall forward to the Minister on or before the 31st January each year, a certified copy of annual balance sheet and profit and loss account as shown by books for year immediately preceding).

Further returns under British Columbia Companies Act.

- | | | |
|---------|----|---|
| Section | 39 | —Special resolution as to change of name, also statutory declaration as to required publication. |
| “ | 41 | —Office copy of order effecting alteration of objects, also copy of memorandum as altered, within 15 days of date of order. |
| “ | 43 | —Copy of resolution effecting increase or cancellation of share capital. |
| “ | 44 | —Copy of resolution effecting consolidation or subdivision of share capital. |

- Section 45 —Office copy or order for re-organization of share capital (within 15 days of date of order), and resolution as confirmed by order.
- “ 49 —Office copy of order confirming resolution for reducing share capital; also copy of minute showing amount of share capital as reduced, the number of shares, etc. (within 15 days of date of order).
- “ 51 —Memorandum showing required particulars on reduction of paid-up capital out of profits.
- “ 52 —Copy of extraordinary resolution by companies with terminating or wasting assets or land companies for reduction of share capital by distribution of moneys in hand.
- “ 56 —Copy of special resolution converting mining company limited by shares into a specially limited company or vice versa; also copy of memorandum as altered.
- “ 57 —Copy of special resolution converting specially incorporated water company into a company limited by shares; also copy of memorandum as altered and copy of the articles adopted.
- “ 58 —Copy of resolution converting company incorporated by special Act into company limited by shares, also memorandum and articles.

- Section 59 —Copy of resolution converting public company into private company.
- “ 60 —Documents required by section on conversion of private into public company.
- “ 72 —Notice of situation of office where any branch register is kept outside the Province.
- “ 81 —Notice of situation and change of situation of registered office of company.
- “ 84 —Consent of proposed director to act—(where he has not signed the articles).
- “ 87 —Notice of first directors or managers (within 15 days after appointment) and any changes in directors or managers within 15 days after the change.
- “ 89 —Copy of every prospectus duly dated, on or before date it bears.
- “ 93(1) —Original or true copy of every mortgage of company's property, within 21 days of its creation, or 30 days, if created outside the Province.
- “ 93(2) —Copy (within the same periods as above respectively) of one of the debentures of a series containing any charge to benefit of which the debenture-holders are entitled *pari passu*, and not covered by a deed creating or defining the security — together

with detailed statement as to issue, and if more than one issue, as to each issue.

Section 93(3) —Trust deed or copy of debenture, together with particulars of chattels or book accounts, in case of mortgage not required to be registered under “Bills of Sale” or “Assignment of Book Accounts” Acts.

“ 93(4) —Particulars of any mortgage on land only, to which “Land Titles Act” applies (in lieu of instrument or true copy).

“ 93(5) —Particulars of mortgage on chattels only, to which “Bills of Sale Act” applies (in lieu of instrument or true copy).

“ 93(6) —Particulars of mortgage on book accounts only, which is required to be registered under “Assignment of Book Accounts Act” (in lieu of instrument or true copy).

“ 93(12)—Notice of any change in title to property comprised in a mortgage, or any other change.

“ 94 —Office copy of order extending time for registration of mortgage—at same time as mortgage in question.

“ 101 —Office copy of order for appointment of a receiver or manager of a company’s property, or notice of having taken possession, or of appointment as re-

- ceiver, within 15 days of the order or of taking possession or of the appointment.
- Section 103 —Abstract of receipts and payments by receiver or manager, once in 6 months and on ceasing to act as receiver, etc., within 14 days of close of period to which abstract relates; also within 14 days of ceasing to act as receiver, etc., notice to that effect.
- “ 117 —Statutory declaration required in order to be relieved from holding statutory annual meeting.
- “ 122 —List of members and summary as to financial position (within 14 days of the first or only ordinary general meeting in the year).
- “ 124 —Copy of every special and extraordinary resolution, and of every ordinary resolution affecting the articles, within 15 days of confirmation, or of passing, respectively.
- “ 125(1) Return of allotments within one month.
- “ 125(2) —Contract, if any, to accept payment otherwise than in cash—or if no contract, full particulars (within one month).
- “ 125(3) —Memorandum (instead of contract) as to shares issued otherwise than for cash (on order of Court); also office copy of Court order.

- Section 126 —Notice of increase of members (of company without share capital) beyond registered number — within 15 days after increase.
- “ 132 —Office copy of Court order, authorizing a meeting of creditors or members to effect compromise, etc., within 15 days of order.
- “ 140 —Copy of resolution changing objects or powers of a company incorporated under Companies Act, 1897 or 1910—within 15 days after passing.

Extra-provincial corporations.

- Section 152 —Notice by extra-provincial company of change in head office or in directors.
- “ 153 —Verified copy of any amendment to charter or regulations—within one month of taking effect.
- “ 154 —Copy of prospectus inviting subscriptions.
- “ 156 —Annual report—not later than 1st March yearly.
- “ 167(2) —Notice of cessation of operations —within one month of notification by registrar of default.
- “ 167(4) —Statutory declaration as to debts —on application to be struck off.
- “ 168 —Office copy of Court order restoring any company to register.
- “ 179 —Office copy of order winding up a company—within 15 days from date of order.

- Section 188 —Office copy of Court order dissolving company—within 15 days of date of order.
- “ 202 —Notice of appointment—to be filed by liquidator, within 7 days of appointment.
- “ 209 —Account of receipts and payments—to be filed twice a year by liquidator with District Registrar of Court.
- “ 220 —Notice of appointment—by liquidator in a voluntary winding-up, within 7 days of appointment.
- “ 231 —Liquidator’s certified summary of receipts and payments—once a year when voluntary winding-up continues more than one year.
- “ 233 —Liquidator’s return of final meeting (voluntary winding-up).
- “ 245 —Office copy of Court order declaring dissolution void, within 7 days of date of order.

CHAPTER XXIII.

WINDING-UP AND INSOLVENCY.

It has been seen above (p. 265) that in some jurisdictions a company may go out of existence by surrender of charter; that in some jurisdictions it may be noted as a corporation which is not subsisting, or may be struck off the register (pp. 269, 270). A company may also go out of existence by being wound up on grounds of insolvency or otherwise. A company's business may also be brought to an end and its assets disposed of to pay creditors by reason of insolvency and proceedings being taken under the Bankruptcy Act.

WINDING UP UNDER PROVINCIAL
LEGISLATION.

Under provincial legislation contained in the Companies Act or in a separate Act a provincially incorporated company may be wound up on various grounds, but not on the ground of insolvency. The company may pass a resolution, in the manner provided for in the governing Act, requiring the company to be wound up. In most jurisdictions the company may also be wound up by the Court or the winding-up continued under the supervision of the Court.

A liquidator is appointed who realizes the assets, discharges the liabilities and divides the surplus (if any) among the shareholders.

THE BANKRUPTCY ACT (9-10 GEO. V. c. 36 AND AMENDING ACTS).

The Bankruptcy Act is a Dominion Act relating to insolvent debtors, including corporations carrying on business in Canada, excepting certain corporations, e.g., banks (s. 2(k)).

An insolvent corporation includes a corporation, whether or not it has done or suffered an act of bankruptcy, (i) which is for any reason unable to meet its obligations as they respectively become due, or (ii) which has ceased paying its current obligations in the ordinary course of business, or (iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing due (s. 2(t)).

Before the Bankruptcy Act was passed insolvent corporations were frequently wound up under the Dominion Winding-up Act (see p. 344, below). This Act is still in force and offers an alternative to the use of the Bankruptcy Act. However, leave of the Court is necessary before the Winding-up Act can apply. This leave hitherto has been readily obtainable.

Receiving order.

If a company commits an act of bankruptcy, a creditor may present a bankruptcy petition to the Court having bankruptcy jurisdiction under the Act. What constitutes an act of bankruptcy is specified in s. 3. The commonest case is permitting an execution to remain unsatisfied. A creditor is not entitled to present a bankruptcy petition unless:—

(a) The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the

petition, the aggregate amount of debts owing to the several petitioning creditors amounts to \$500; and

(b) The act of bankruptcy on which the petition is grounded occurred within six months before the presentation of the petition (s. 4).

The petition must be verified by affidavit, served on the company and presented to the court having jurisdiction in the locality of the debtor (s. 6). The petition must be filed and a copy lodged to be sealed and issued to the petitioner. A copy of the petition with notice of the time and place of the presentation and hearing must be served at least 8 days before the presentation and hearing (rules 74 ff.). The court, after proof of the debt and upon being satisfied that the requirements of the Act have been complied with, may make a *receiving order*, whereby an authorized trustee is appointed receiver. Thereupon the property of the company vests in the trustee and no creditor who can prove his claim in bankruptcy can take any proceedings except with the leave of the court. A secured creditor, however, e.g., a mortgagee, may realize his security (s. 6).

Authorized assignment.

Where a company's liabilities to creditors payable as debts under the Act exceed \$500, it may at any time prior to the making of a receiving order, make an assignment to an authorized trustee of all its property for the general benefit of its creditors. Such an assignment is called an *authorized assignment*, and vests the property of the company in the trustee, subject to the rights of secured creditors (s. 10). The form of the document is set out in the schedule to the Act (Form 18). Blank forms may be obtained from any authorized trustee. The

assignment should be executed under the corporate seal in pursuance of a resolution of the board of directors and delivered to the trustee. A company cannot, after a petition for a receiving order has been served and before the receiving order is made, make an assignment in order to choose its trustee.

Matters requiring attention of trustee.

Official name (s. 16).

1. Assignment or receiving order.

Within four days of assignment file the assignment in Court having jurisdiction in the locality of the debtor (s. 10A).

Register assignment or receiving order in every district, county or territory in which any real or immovable property is situate (s. 11 (8)(9)(11) (12)).

Consider whether should notify Banks of assignment (s. 34).

Publish notice in Canada Gazette (s. 11(4)).

Publish notice in local paper not less than six days before meeting of creditors (s. 11(4)).

Within five days of assignment or receiving order mail, prepaid and registered, to every creditor notice of meeting, list of creditors, with addresses and amount of their claims (s. 42(2)).

If sheriff has seized property serve with copy of assignment or receiving order (s. 11(3)).

Property not divisible amongst creditors (s. 25).

Debtor's statement within seven days of assignment or receiving order; verify statement and make inventory (s. 54(1)).

File copy of debtor's statement with registrar (r. 97).

Trustee to furnish debtor with instructions how to prepare statement (r. 97).

Debtor to attend first meeting of creditors (s. 54(3); r. 113).

2. Take possession of property (s. 17(1)).

If sheriff has seized goods serve with copy of assignment (s. 11(3)).

3. Insure—s. 17(3)(4).

Rent—ss. 52 and 20.

4. Dominion statistician.

Send particulars (s. 24(2)).

5. Meeting of creditors.

Hold as soon as possible and within twenty days of assignment or receiving order (s. 42(1)(2)).

Within five days of assignment or receiving order mail, prepaid and registered, to every creditor a notice of meeting to be held not later than fifteen days after mailing of notice, and include in said notice a list of the creditors and the amount of their claims and their post office addresses (s. 42(2)).

With notice of first meeting send proxy (s. 42(13)).

(Nothing said as to form of proof of debt although advisable to send).

Reports to creditors when required (s. 24(1)).

Have chairman sign minutes (s. 77).

Have debtor attend first meeting (s. 54(3); r. 113).

Creditors.

On final dividend send particulars (s. 37(2)).

Trustee may give notice to creditors who have not proved debt (s. 37(6)).

Have creditors prove debts (s. 45).

Interest on claims (s. 49).

Dividends.

Declare dividends with all convenient speed and within six months pay dividends (s. 37(1)).

On final dividend send to every creditor particulars as in s. 37 (2).

Discharge wages and certain other claims at once (s. 51(2)).

Inspectors.

Expenses—s. 43(4).

Solicitors.

Costs (s. 67, rr. 57 and 61).

Discharge of trustee (r. 107).

Keep books at least 6 years (r. 110).

Deposit proceeds of sales with chartered bank (s. 26(2)).

Compositions.

If acting under s. 13, send ten days' notice of meeting and otherwise comply with s. 13 (3).

Form of proposal (r. 98).

7 days' notice at least to be given of application to Court for approval and file report (r. 99).

In connection with application for approval registrar requires:

1. Report of trustee with proof of mailing of notice of meeting, proposal, etc.

2. If shareholders notified by advertisement, order of Registrar directing advertising; copy of notice with proof of advertising.

3. Minutes of meeting.

4. Debtor's statement.

5. Proof of mailing notice of application for approval.

6. Proof as to creditors.

7. Proof of creditors filing claims and proving same.

8. Registrar's order for hearing.

Meeting of creditors.

The term "creditor" includes bondholders and shareholders, each class of whom is in meeting to express its views or wishes in the manner prescribed by the General Rules (s. 2(m)). The Act contains provisions as to the procedure at the meeting. A person is not entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved his debt and proof has been lodged with the trustee before the time appointed for the meetings (s. 42(9)). Proof is made by statutory declaration verifying the debt (s. 45(2)). See Forms Nos. 47 and 48 in the schedule to the Act.

A secured creditor is not entitled to vote until he has proved his claim and valued his security. For the purpose of voting, a secured creditor, unless he surrenders his security (see p. 342, below), must state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and he is to be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security (s. 42(10)).

A creditor is not to vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, or by whom an authorized assignment has not been made, as a security in his hands, and to estimate the value thereof, and for the purpose of voting, but not for the purposes of dividend, to deduct it from his proof (s. 42(11)).

The chairman of a meeting may admit or reject a proof for the purpose of voting; but his decision is subject to appeal to the court (s. 42(12)).

Creditors may vote in person or by proxy deposited with the trustee at or before the meeting at which the proxy is to be used. It is the trustee's duty to send to each creditor with the notice of the first meeting a proxy in the prescribed form (s. 42(13)).

At the first meeting or at a subsequent meeting the creditors appoint one or more (not exceeding five) inspectors.

Subsequent proceedings.

The trustee is authorized by the Act to do a number of things with the permission in writing of the inspectors, e.g., to sell the property, to carry on the business, to bring or defend actions, make compromises with creditors.

The trustee will proceed to get in all the assets of the company; collect claims against its debtors, and enforce the liability of holders of unpaid shares. As to the liability of unpaid shareholders, see s. 36; General Rules 122-130.

From time to time the trustee will report:

(a) When required by the inspectors, to every creditor, and

(b) When required by any specific creditor, to such creditor showing the condition of the debtor company's estate, the moneys in his hands and particulars of any property remaining unsold (s. 24).

The Act contains a provision whereby a creditor can, under certain conditions, take proceedings for his own benefit in case the trustee refuses to act (s. 35).

Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the trustee, with all convenient speed, is to declare and distribute dividends amongst the creditors who have proved their claims. Such dividend as can be paid is to be paid within six months from the date of the receiving order or assignment, and earlier, if required by the inspectors. Thereafter a further dividend is to be paid whenever the trustee has sufficient money on hand to pay the creditors ten per cent. and more frequently if required by the inspectors, until the estate is wound up and disposed of. For further provisions with regard to dividends, including the final dividend, see s. 37.

The trustee may examine any person who is or has been an agent, clerk, servant, officer, director or employee of the debtor corporation (s. 56).

As regards claims of secured creditors, see s. 46. A secured creditor has any one of four courses open to him. (1) He may rely on his security. (2) He may realize his security and prove for the balance after deducting the net amount realized. (3) He may surrender his security to the trustee and prove for his whole debt. (4) If he does not either realize

or surrender his security, he must within thirty days of the date of the receiving order or of the making of the authorized assignment, or within such extended time as may be allowed, file with the trustee a statutory declaration setting out full particulars of his security or securities, the date when given, and the value at which he assesses each. The trustee may redeem any security so valued on payment of the assessed value; or, if he is dissatisfied with the value at which a security is assessed, the trustee may require the property comprised therein to be sold as provided in the Act.

As to the priority of claims and the rights of landlords, see ss. 51 and 52.

Composition, extension or scheme of arrangement (s. 13).

Provision is made for the submission to creditors of a proposal for a composition in satisfaction of debts, or an extension of time for payment of debts or a scheme of arrangement of the debtor's affairs. The debtor may, either before or after the making of a receiving order or an authorized assignment, require an authorized trustee to convene a meeting of creditors to which the proposal is submitted. If a majority in number of creditors who hold two-thirds in amount of the proved debts resolve to accept the proposal as made or altered or modified at the request of the meeting, the trustee is to submit it to the court for approval. If the court approves of the proposal it becomes binding on all the creditors. For details see s. 13; General Rules 98-106.

THE DOMINION WINDING-UP ACT (R. S. C. (1906), C. 144 AND AMENDING ACTS).

Any Dominion or Provincial company may be wound up under the Winding-up Act on the ground of insolvency, but leave must be obtained from the Court having bankruptcy jurisdiction under the Bankruptcy Act, unless the company is one to which that Act does not apply, e.g., a loan company. Foreign companies if insolvent and having assets in Canada may also be wound up under the Act.

A Dominion company (but not a provincial company) may also be wound up under the Winding-up Act in cases *other* than those of insolvency. These are set out in s. 11 and include the following:—When the company at a special meeting of shareholders called for the purpose has passed a resolution requiring the company to be wound up; when the capital of the company is impaired to the extent of 25 per centum thereof, and when it is shown to the satisfaction of the Court that the lost capital will not be restored within one year; when the Court is of opinion that for any other reason it is just and equitable that the company should be wound up. “Just and equitable” covers a number of matters. Thus, where the subject matter of the business for which the company was incorporated has disappeared and the substratum of the company has gone, or where the affairs of the company are brought to a complete deadlock, the company may be wound up on the ground that it is just and equitable to do so. As to who may apply in the above mentioned cases see s. 12.

Insolvency.

In the vast majority of cases a company is wound up on the ground of insolvency. A company is deemed to be insolvent in the events set out in s. 3 of the Act. Of these the commonest are inability to pay its debts as they become due, and permitting an execution to remain unsatisfied. A company is deemed unable to pay its debts as they become due, whenever a creditor to whom the company is indebted in a sum exceeding \$200 then due has served on the company, in the prescribed manner, a demand in writing requiring the company to pay the sum then due, and the company has for 60 days afterwards neglected to pay such sum or to secure or compound for the same to the satisfaction of the creditor.

Where the company is insolvent an application for a winding-up order may be made to the Court by the company or by a creditor for the sum of at least \$200, or a shareholder in the amount of at least \$500. Most applications are made by creditors.

Creditors' petition.

An application by a creditor is by petition verified by affidavit. The petition and other documents will be prepared by the petitioner's solicitors and served on the company, together with a notice of the time and place of the presentation of the petition. If the petitioning creditor's debt is established or not disputed and there is evidence that the company is insolvent within the meaning of the Act and the proceedings taken on the creditor's behalf are regular, he will generally be entitled to a winding-up order as of right as between himself and the company. If the petition, however, is opposed by other creditors, the order may be refused. The Court exercises a

discretion as to whether the order will be granted or not, and an order will be refused or the petition directed to stand over in special cases (see Company Law, pp. 711, 712, 716, 718 ff).

Winding-up order and order of reference.

If the petitioner is successful, an order is made that the company be wound up under the Act. At the same time an order is made (a) appointing a provisional liquidator; (b) referring it to an Official Referee to appoint a permanent liquidator; (c) delegating to the Official Referee the powers of the Court and (d) awarding the petitioner the costs of the application. The last mentioned order is called an order of reference or an order of delegation.

Effect of winding-up order.

The company is to cease carrying on its business from the time of the order, except in so far as is necessary, in the opinion of the liquidator, for the beneficial winding up of the company (s. 20). No transfers of shares except with the sanction of the liquidator under authority of the court may be made (s. 21). No suit, action or other proceedings are to be proceeded with or commenced against the company except with leave of the Court (s. 22). As to when leave will be granted see Company Law, p. 740. Secured creditors, such as mortgagees and bondholders, will not generally be restrained from enforcing their rights, but must first obtain leave from the Court.

Attachments, executions, etc., put in force against the estate or effects of the company after the order are void (s. 23). No lien is to be created by the issue or delivery to the sheriff of any writ of execution or

by levying upon or seizing under such writ the effects or estate of the company; or by the filing or registering of any memorial or minute of judgment, or by the issue or taking out of any attachment or garnishee order or other process or proceeding if before payment over to the plaintiff of the moneys actually levied, paid or received under such writ, attachment, garnishee order, etc., the winding up of the business of the company has commenced. A lien for costs is excepted (s. 84).

Upon appointment of the liquidator all the powers of the directors cease, except in so far as the Court or the liquidator sanctions the continuance of such powers (s. 31).

Procedure after the winding-up order.

The provisional liquidator will take possession of the books and assets of the company. The official referee or officer of the Court to whom the winding up is referred under the order of delegation requires the provisional liquidator to give security. Certain trust companies are not required to give security (s. 30). A notice to creditors, contributories and shareholders is directed to be advertised calling on them to attend before the Court for the appointment of a permanent liquidator. The provisional liquidator is usually appointed permanent liquidator, but the wishes of the majority of creditors are usually followed.

A notice to creditors to send in their claims verified by affidavit is published.

The liquidator then proceeds to get in the assets and collect moneys owing to the company; he will make a list of persons liable for unpaid shares, submit the list to the official referee who orders such

persons to attend and show cause why they should not be settled on the list of contributories. The official referee proceeds to try the case when a contributory disputes his liability.

The liquidator will bring in to the official referee a list of claims filed against the company and will serve a notice on those persons whose right to rank against the estate is disputed by him. The notice requires such persons to appear before the official referee and prove their claims. Contested claims are tried by the official referee and decided by him, subject to the right of appeal conferred by the Act.

The liquidator will proceed to sell the company's assets by public auction or by tender as directed by the official referee. The sale is advertised. If the assets are not disposed of at the sale, disposal by private sale will be authorized.

When creditors' claims are disposed of, the assets realized and proceedings against contributories or persons liable for misfeasance (see p. 353, below) are disposed of and the judgments against such persons realized upon, the solicitors' costs will be taxed, the remuneration of the liquidator and the dividend to be paid to creditors fixed. After payment of the dividend and costs and remuneration, an order is made discharging the liquidator and directing the cancellation of his bond.

Powers and duties of liquidator.

The liquidator, on his appointment, is to take into his custody or under his control all the property and effects, etc., of the company (s. 33); prepare a statement of assets and debts within 60 days after his appointment (s. 33A); mail to the Dominion Statistician, Ottawa, the documents enumerated in

s. 38A promptly after their receipt or preparation. Certain powers are conferred on the liquidator which are exercisable with the approval of the Court, upon such previous notice to the creditors, contributories or shareholders or members as the Court orders (s. 34). Inter alia the liquidator may bring and defend actions, carry on the business of the company so far as is necessary for the beneficial winding up of the company, sell the assets, raise money on the security of the assets of the company (s. 34); appoint a solicitor to assist him (s. 35). With the approval of the Court the liquidator may compromise debts due to the company (s. 36) and make compromises with the creditors (s. 37).

Creditors.

Meetings of creditors, contributories and shareholders may be directed by the Court to be held (s. 61). In ascertaining the wishes of creditors, regard is to be had to the amount of each creditor's claim (s. 62). The Court may summon creditors to consider any proposed arrangement or compromise and if a majority in number representing three-quarters in value of the creditors, or class or classes of creditors, present in person or by proxy at the meeting agree to such arrangement or compromise, it may be sanctioned by the Court and then becomes binding on creditors, liquidator and shareholders (s. 64). Votes at meetings may be given in person or by proxy (s. 66).

The Court fixes a time within which creditors must prove their claims. All descriptions of claims, present, future, certain or contingent, may be proved, and where they are for unliquidated damages or are dependent on some contingency, they may be valued (s. 69).

Clerks and employees have a special priority for any arrears of salary or wages due and unpaid at the time of the making of the winding-up order, not exceeding the arrears which have accrued to them during the three months next previous to the date of such order (s. 70). As to the personal liability of directors for such wages see p. 158, above. As to what persons may claim the above priority, see Company Law, pp. 813 ff. As to set off see Company Law, p. 816.

Contributories (s. 48-60).

The liquidator makes out a list of contributories, i.e., shareholders, showing the names, addresses, descriptions and number of shares in respect of which each contributory appears to be liable. The list is settled by the official referee. When the contributory objects to being settled on the list, his case is heard by the official referee who issues an order embodying his decision and awarding costs. A right to appeal is conferred by the Act.

Every shareholder is liable to contribute the amount unpaid on his shares or on his liability to the company. As to defences of contributories, see Company Law, pp. 786 ff. It should be noted that some of the defences open to a shareholder against a claim for payment by the company, as a going concern, are not available against the liquidator. Among these are the defence that the subscription for shares was induced by fraud or misrepresentation; and the defence that the shares were taken subject to a condition subsequent or collateral agreement, e.g., that the shares were to be paid for by the supply of goods, or by crediting remuneration as an officer of the company. A condition precedent on the other

hand is a defence. It is a condition precedent where some prerequisite is to be complied with before the contract to subscribe for shares is to become complete, e.g., that a definite amount is to be subscribed by others before the application is to become effective. The distinction between a condition precedent and a condition subsequent or collateral agreement is often difficult to determine.

As a general rule where a person has transferred his shares and the transfer has been registered, the transferor is no longer liable as a shareholder. In jurisdictions, however, where incorporation by memorandum and articles is in vogue the Act provides that all persons who have transferred their shares within a year before the winding-up, are liable to be placed on a B list. Persons on the B list are liable to contribute when the persons to whom they transferred their shares fail to pay the calls made on them. Fraudulent and collusive transfers to avoid liability afford no defence.

After the list of contributories has been settled the official referee will, if and so far as necessary, authorize the liquidator to levy calls on contributories and enforce payment of calls by an order. The Court will adjust the rights of contributories among themselves.

Secured claims (ss. 76-82).

Secured creditors, e.g., mortgagees, cannot be compelled to file their claims and prove under the Act, if they prefer to rely on their security and not to ask to share in the distribution of the assets. They must, however, obtain leave of the Court to institute proceedings to enforce their security after a winding-up order has been made.

A secured creditor may—(1) Rely on his security and not prove; or (2) prove under the Act.

If he proves under the Act, he must, by affidavit, specify the nature and amount of his security and put a specified value on it. The liquidator may then with the approval of the Court, either (a) consent to the creditor retaining his security at the specified value; or (b) require the creditor to deliver up his security at the specified value to be paid to him out of the estate upon the realization of the security with interest from the date of filing the claim. Whether the creditor retains his security or delivers it up, he may prove for the balance of his claim.

Distribution of assets.

After the claims of creditors have been allowed or disallowed the liquidator distributes the assets among the persons entitled (s. 74). Claims sent in after a partial distribution, subject to proof and allowance, rank with other claims in any future distribution (s. 75). The property of the company is to be applied in satisfaction of its debts and liabilities and the charges, costs and expenses of winding up (s. 91). All costs, charges and expenses properly incurred in the winding-up, including the remuneration of the liquidator, are payable out of the assets in priority to all other claims (s. 92). After the company's creditors have been paid and the costs of the winding up have been satisfied, it is the duty of the liquidator to divide the balance (if any) among the shareholders or members of the company. Such distribution will be made among them according to their rights under the letters patent and by-laws or memorandum and articles of association (s. 93).

Preference shares commonly carry a preferential right to the return of capital on a winding-up, in which case the amounts paid in by the preference shareholders must be repaid to them before the common shareholders get anything. Where the preference shares do not confer such right or where the shareholders are all of one class, the surplus assets (unless there is some provision to the contrary in the governing documents) are divisible among the shareholders equally.

Fraudulent preferences and payments.

Certain contracts, conveyances and payments by a company which is subsequently wound up, are presumed to be made with intent to defraud creditors, or void or may be upset. See Company Law, p. 836.

Misfeasance.

Section 123 of the Act reads as follows:—

123. When in the course of the winding-up of the business of a company under this Act, it appears that any past or present director, manager, liquidator, receiver, employee or officer of such company has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally liable, examine into the conduct of such director, manager, liquidator, receiver, officer or employee, and, upon such examination may make an order requiring him to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest, at such rate as the court thinks just, or to contribute such sums of moneys to the assets of the company, by way of compensation in respect of such misapplication, retention, misfeasance or breach of trust, as the Court thinks fit. R. S., c. 129, s. 83.

TABLE OF FEES

Dominion.

P. C. 14.

AT THE GOVERNMENT HOUSE AT OTTAWA.

SATURDAY, the 12th day of January, 1918.

PRESENT:

HIS EXCELLENCY THE ADMINISTRATOR IN COUNCIL.

His Excellency the Administrator in Council is pleased to make and establish and doth hereby make and establish the following tariff of fees, under the provisions of Section 24 of the Companies Act as amended by section 6 of the Companies Act Amendment Act, 1917.

LETTERS PATENT AND SUPPLEMENTARY LETTERS PATENT.

When the proposed capital of the Company is \$50,000 or less	\$100 00
When the proposed capital is more than \$50,000, and not more than \$200,000	100 00
and \$1 for each \$1,000 or fractional part thereof in excess of \$50,000.	
When the proposed capital is more than \$200,000 and not more than \$500,000	250 00
and fifty cents for each \$1,000 or fractional part thereof in excess of \$200,000.	
When the proposed capital is more than \$500,000.....	400 00
and twenty cents for every additional \$1,000 or fractional part thereof.	
For Letters Patent to any company under Section 7A added to the Companies Act by Section 4 of the Companies Act Amendment Act, 1917 (other than a company incorporated for charitable purposes only) ...	100 00

For Letters Patent to any company incorporated for charitable purposes only (other than a war charity when there shall be no fee) 25 00

For Letters Patent to a company under Section 7B added to the Companies Act by Section 4 of the Companies Act Amendment Act, 1917, when no amount at which shares may be sold is set out in the Letters Patent, then the amount of each share shall be fixed at \$100 and the fee payable shall be according to the foregoing tariff upon the capital stock calculated on the total amount of such shares either at the price set forth in the Letters Patent or at the fixed sum of \$100 as the case may be.

For Supplementary Letters Patent increasing the capital of a company, the fee to be according to the foregoing tariff, but on the increase only, that is, the fee to be the same as for the incorporation of a company with capital equal to the increase.

For Supplementary Letters Patent changing the name of a company 50 00

For Supplementary Letters Patent for other purposes.. 100 00

FOR FILING RETURNS.

For filing returns under Section 106 of the Companies Act as amended by Section 13 of the Companies Act Amendment Act, 1917, the fee payable upon each return shall be as follows:—

When the capital stock of the company is \$200,000 or less \$ 5 00

When the capital stock of the company is more than \$200,000, but not more than \$500,000..... 10 00

When the capital stock of the company is more than \$500,000, but not more than \$1,000,000..... 25 00

When the capital stock is more than \$1,000,000..... 25 00
and \$1 on each \$1,000,000 in excess of the first million, but not exceeding \$50 in all.

For filing return from a company having shares without nominal or par value, the fee payable shall be calculated upon the capitalization of such company shown in such return.

For filing return from a company incorporated for charitable purposes (other than a war charity when there shall be no fee)	1 00
For filing return from any company incorporated under Section 7A added to the Companies Act by Section 4 of the Companies Act Amendment Act, 1917 (other than a company incorporated for charitable purposes only)	2 00

CERTIFICATES OF REGISTRATION, ETC.

For each Certificate of Registration or Deposit of any prospectus, notice or agreement or other such document filed for that purpose under the provisions of the Companies Act or the Companies Amendment Act, 1917	1 50
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His Excellency is also pleased to order that all former Orders in Council respecting the tariff of fees for the incorporation of companies and the tariff of fees established thereunder, shall be and the same are hereby cancelled.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

The Honourable
The Secretary of State.

Ontario.

FEES

1. Fees must accompany all applications and all documents to be filed. Where the fee does not accompany a document to be filed such document will be returned to the sender forthwith. *Vide* Section 138 and 139 of the Ontario Companies Act.

2. No cheque will be accepted unless it is *marked*.

3. Post office orders, postal notes, cheques, drafts, etc., should be payable to the order of the *Provincial Treasurer*.

The following schedule of fees shall be payable for the various services rendered by the Department under the provisions of the Ontario Companies Act and the Extra Provincial Corporations Act:—

INCORPORATION WITH SHARE CAPITAL.

When the proposed capital of an applicant company is \$40,000 or less the fee is \$100.

When the proposed capital is more than \$100,000, but does not exceed \$100,000, the fee is \$100 plus \$1 for every \$1,000 or fractional part thereof in excess of \$40,000.

When the proposed capital is more than \$100,000, but does not exceed \$1,000,000, the fee is \$160 plus \$2.50 for every \$10,000 or fractional part thereof in excess of \$100,000.

When the proposed capital is more than \$1,000,000 the fee is \$385 for the first \$1,000,000 plus \$2.50 for every \$10,000 or fractional part thereof in excess of \$1,000,000.

CO-OPERATIVE COMPANIES where the proposed capital does not exceed \$10,000—\$10.

RURAL TELEPHONE COMPANIES and other rural companies coming within the provisions of Part XII. of the Ontario Companies Act, where the proposed capital does not exceed \$25,000—\$25.00.

Where the proposed capital is more than \$25,000 the fee is on the same scale as that applying to ordinary share capital companies.

RURAL CHEESE AND BUTTER COMPANIES, and other rural companies of a similar nature, and RURAL CEMETERY COMPANIES, where the proposed capital does not exceed \$10,000—\$10.

Where the capital of a company of the classes in the two next preceding paragraphs referred to exceeds \$10,000, but does not exceed \$25,000, the fee is \$10 plus \$1 for every \$1,000 or fractional part thereof in excess of \$10,000.

To take advantage of these special tariffs it must be demonstrated to the satisfaction of the Department that the purposes for which the company is being incorporated bring it within the classes specified.

SUPPLEMENTARY LETTERS PATENT.

Where the capital of a company is increased, the fee is according to the foregoing tariff, but on the increase only; that is, the fee is to be the same as for the incorporation of a company with capital equal to the increase.

For any other purpose the fee is \$100.

Where the fee payable for incorporation is \$25 or less, the fee for Supplementary Letters Patent, where the authorized capital is not increased in excess of \$25,000, shall be \$5.

AMALGAMATION.

Fees are payable on the same basis as for incorporation. No fee previously paid is taken into account.

ORDERS.

Changing the name of a company	\$25 00
Accepting the surrender of a charter	20 00
Accepting the surrender of a charter where the fee payable for incorporation is \$25 or less.....	5 00
Accepting the surrender of a charter of a corporation without share capital	5 00
Permitting a company to keep its books out of the Province	50 00
Approving by-law authorizing distribution of assets....	10 00
Approving by-law under Sec. 162, and filings thereunder.	2 00

CERTIFICATE ENTITLING COMPANY TO COMMENCE BUSINESS.

Certificate under Part VIII. of the Ontario Companies Act and filing of necessary documents thereunder.....	\$25 00
Certificate where fee payable for incorporation is \$25 or less	5 00

FILING DOCUMENTS.

Prospectus	\$2 00
Statement in lieu of prospectus	2 00
Return of allotment (where the company has not obtained a certificate entitling it to commence business)	2 00
Report for statutory meeting	2 00
By-law providing for sale of shares at a discount.....	5 00
By-law varying number of directors	2 00
By-law changing head office	2 00
By-law fixing quorum of directors	2 00
Notice of resolution passed for winding up.....	2 00
Liquidator's report on winding up	2 00
Filing duplicate original mortgage under Sec. 82 (2)...	2 00
Filing power of attorney	2 00
Filing any other document under the Act.....	2 00

FILING ANNUAL SUMMARIES.

The following fees are payable on the filing of the Annual Return of a company having share capital:

Where the capital of the company is \$40,000 or under...	\$ 5 00
Where the capital of the company is \$100,000 or under..	10 00
Where the capital of the company is \$500,000 or under..	20 00
Where the capital of the company is \$1,000,000 or under.	25 00
Where the capital of the company is over \$1,000,000....	30 00

Note.—The above schedule applies to extra-provincial as well as to Ontario companies.

Co-operative Companies.

Companies with a capital of \$5,000 or under	\$ 2 00
Companies with a capital of \$10,000 or under	3 00
Companies with a capital of \$20,000 or under	4 00
Companies with a capital of \$40,000 or under	5 00
Companies with a capital over \$40,000	10 00
Filing the return of a company without share capital...	1 00

CORPORATIONS WITHOUT SHARE CAPITAL.

Charitable corporations and trusts of a similar nature..	\$5 00
War charities	No fee
All other incorporations without share capital.....	10 00
Supplementary Letters Patent	5 00
Change of name	5 00
Surrender	5 00

EXTRA-PROVINCIAL CORPORATIONS.**LICENSES.**

Fees for Licenses to Extra-provincial Corporations are based on the amount of capital investment in the Province authorized by the License, and are according to the foregoing tariff for incorporation.

SUPPLEMENTARY LICENSE.

Where the amount of the authorized capital investment of an Extra-provincial Corporation is increased, the fee is the same as for Supplementary Letters Patent under the Ontario Companies

Act. No fee previously paid for License or Supplementary License is taken into account.

Varying powers authorized by original License, where
 capital is not increased \$100 00
 Changing the name of an extra-provincial corporation.. 10 00

FILING ANNUAL SUMMARIES.

See p. 360 above.

SEARCHES, ETC.

Search of returns, one year.....	\$0 25
Search of returns, two years.....	35
Search of returns, three years.....	45
And so on, adding for each year, 10c.	
Search by mail, additional.....	25
Copying, uncertified, per folio	08
Copying, certified, per folio	10
Certificate, additional	50
Fee for copy of Letters Patent.....	2 50
Fee for copy of The Ontario Companies Act in pamphlet form	50

LICENSES IN MORTMAIN.

License is granted for a period of 15 years.

Fees for licenses in mortmain are based on the value of the land owned by the corporation for the purpose of carrying on its business in the Province of Ontario, and are as follows:—

The minimum fee is \$50 for which the corporation is authorized to hold land to the value of \$50,000.

Where the value of land is over \$50,000, but does not exceed \$100,000, the fee is \$1 per thousand.

Where the value of land is over \$100,000, but does not exceed \$250,000, the fee is \$100 plus 50c. for each \$1,000 in excess of \$100,000.

Where the value of land is over \$250,000, but does not exceed \$500,000, the fee is \$175 plus 20c. for each \$1,000 in excess of \$250,000.

Where the value of land is over \$500,000 the fee is \$225 plus 10c. for each \$1,000 in excess of \$500,000.¹

¹ Licenses for 30 years are granted on payment of a fee of 50 per cent. in addition to the usual fee for the shorter term.

Quebec.**FEES FOR INCORPORATION OF JOINT STOCK COMPANIES BY LETTERS PATENT, AND FOR ERECTING, BY LETTERS PATENT, CITY AND TOWN MUNICIPALITIES.**

1. When the capital is \$20,000, or less than \$20,000, the fee shall be \$40.

2. When the capital is more than \$20,000, and less than \$50,000, the fee shall be \$75.

3. When the capital is \$50,000 or more, and less than \$100,000, the fee shall be \$100.

4. When the capital is \$100,000 or more, and less than \$150,000, the fee shall be \$150.

5. When the capital is \$150,000 or more, and less than \$200,000, the fee shall be \$200.

6. When the capital is \$200,000 or more, and less than \$300,000, the fee shall be \$250.

7. When the capital is \$300,000 or more, and less than \$400,000, the fee shall be \$300.

8. When the capital is \$400,000 or more, and less than \$500,000, the fee shall be \$350.

9. When the capital is \$500,00 or more, and less than \$600,000, the fee shall be \$375.

10. When the capital is \$600,000 or more, and less than \$700,000, the fee shall be \$400.

11. When the capital is \$700,000 or more, and less than \$800,000, the fee shall be \$425.

12. When the capital is \$800,000 or more, and less than \$900,000, the fee shall be \$450.

13. When the capital is \$900,000 or more, and less than \$1,000,000, the fee shall be \$475.

14. When the capital is \$1,000,000, the fee shall be \$500.

15. For every million dollars of additional capital, or fraction thereof, the fee shall be \$100.

16. Upon every application for supplementary letters patent increasing or reducing the capital, the fee shall be calculated on the actual amount of the increase or reduction in question, and the fee payable shall be the same as that payable on letters patent for the incorporation of a company whose capital is of the same amount as the proposed increase or reduction.

In the case of an alteration in the value of shares the fee shall be \$25 (arts. 5992, 5996 and 5997, R. S. Q., 1909).

17. Upon every application for supplementary letters patent, other than those for the increase or reduction of capital, or for an alteration in the value of shares, the fee shall be 20% of the amount of the fee for the original incorporation.

18. Upon every application by a subsisting and valid corporation for letters patent to carry on its business under the "Quebec Companies Act, 1920," the fee shall be 50% of the fee paid at the date of incorporation of the said company, if the application covers only the powers mentioned in article 5967*b* or in article 5967*c* and 5967*d* of the Revised Statutes, 1909.

19. Upon every application for letters patent confirming an agreement for the amalgamation of companies, the fee shall be 50% of the fee payable for letters patent incorporating a company with a capital equal to the total capital of the companies applying for amalgamation (art. 5967*b*, R. S. Q., 1909).

20. Upon every application for surrender of charter, the fee shall be \$50 (5973*a*, R. S. Q., 1909).

21. Upon every application for creating and issuing any part of the capital stock as preferred stock the fee shall be \$25 (R. S. Q., 1909, art. 5989).

22. Upon every application for alteration in the value of shares, the fee shall be \$25 (R. S. Q., 1909, art. 5997).

23. Upon the filing and certification of every annual summary the fee shall be \$10 (R. S. Q., 1909, art. 6031).

24. Upon every application for letters patent to incorporate a corporation or association without share capital, the fee shall be \$25 (R. S. Q., 1909, art. 6084).

25. Upon every application for letters patent to incorporate a town municipality, the fee shall be \$150.

26. Upon every application for letters patent to incorporate a city municipality, the fee shall be \$250.

LICENSES TO EXTRA-PROVINCIAL CORPORATIONS.

Tariff of fees to be paid for the license granted to Extra-provincial Commercial Corporations, and Joint Stock Companies, under article 8, chapter 34, IV. Edward VII.

1° When the capital stock of the company is \$40,000, or less, the fee will be \$100.

2° When the capital stock is over \$40,000, but does not exceed \$100,000, the fee will be \$100, and \$1 for every \$1,000 or fractional part thereof in excess of \$40,000.

3° When the capital stock is over \$100,000, but does not exceed \$1,000,000, the fee will be \$160, and \$2.50 for every \$10,000 or fractional part thereof in excess of \$100,000.

4° When the capital stock is over \$1,000,000, the fee will be \$385, and \$2.50 for every \$10,000 or fractional part thereof in excess of \$1,000,000.

5° When the company has no determined stock, the fee will be \$100.

6° When the company employs only a portion of its capital here, the tariff fee (from 1 to 4), will be charged on such part so employed here, upon an affidavit or solemn declaration, stating what portion is so employed.

If the company increases this portion, it must produce an affidavit or declaration thereof, and shall then pay an additional fee to cover the proportion of increased capital so employed in the Province, according to the above tariff (from 1 to 4).

The Honourable the Secretary may require the company, its officers, directors, clerks and employees to furnish, under oath or otherwise, such information respecting the capital and affairs of the Company as he may deem desirable and necessary.

Manitoba.

TARIFF OF FEES FOR LETTERS PATENT OF INCORPORATION.

By Order-in-Council dated the fourth day of September, A.D. 1919, the following new Tariff of Fees, for Letters Patent of Incorporation and for the issue of Licenses to Extra-provincial Corporations, was brought into force, viz.:

In the case of Extra-provincial corporations, the "capital" is the capital employed in the Province.

When the capital does not exceed \$	20,000.00....	\$ 40.00
Over \$	20,000.00 and not exceeding	30,000.00.... 50.00
Over	30,000.00 and not exceeding	40,000.00.... 60.00
Over	40,000.00 and not exceeding	50,000.00.... 70.00
Over	50,000.00 and not exceeding	60,000.00.... 80.00
Over	60,000.00 and not exceeding	75,000.00.... 100.00
Over	75,000.00 and not exceeding	100,000.00.... 120.00
Over	100,000.00 and not exceeding	125,000.00.... 130.00
Over	125,000.00 and not exceeding	150,000.00.... 140.00
Over	150,000.00 and not exceeding	200,000.00.... 150.00
Over	200,000.00 and not exceeding	250,000.00.... 160.00
Over	250,000.00 and not exceeding	300,000.00.... 170.00
Over	300,000.00 and not exceeding	400,000.00.... 180.00
Over	400,000.00 and not exceeding	500,000.00.... 200.00
Over	500,000.00 and not exceeding	600,000.00.... 210.00
Over	600,000.00 and not exceeding	700,000.00.... 220.00
Over	700,000.00 and not exceeding	800,000.00.... 230.00
Over	800,000.00 and not exceeding	900,000.00.... 240.00
Over	900,000.00 and not exceeding	1,000,000.00.... 250.00
Over	1,000,000.00 for each additional	
	\$100,000.00 or fraction thereof	20.00

With an extra charge of \$5 per folio, for every folio over ten.

And that, in addition to the above fees, applicants must deposit with the Provincial Secretary, with their petition, the further sum of \$25 toward payment of the cost of the notice in "The Manitoba Gazette," provided for by section 16 of the said "The Companies Act," any surplus of said sum of \$25 to be subsequently returned to the applicants; but if such notice costs more than \$25, the applicants must pay the extra cost;

And that, in cases of petitions for supplementary letters patent, where the capital stock is increased, the fees to be according to the above schedule, but on the increase only; and, where the capital stock is not increased, \$25, and \$5 per folio for every folio over five;

And that the fee to be paid for an Order-in-Council, authorizing the change of name of a company, shall be \$25, including the sum of \$5 to be paid for notice in "The Manitoba Gazette," as required under section 95.

Attention is directed to the additional cost when the powers petitioned for exceed the average number of words. The number of words in the letters patent of incorporation is 1,000, of which 300 words are allotted for the description of the powers granted. When that number of words is exceeded in defining the powers of the company, then the additional cost is assessed at the rate of \$5 for each 100 words, or fraction of that number, over and above 300.

FEES FOR REVIVING LETTERS PATENT.

Total fees in default	\$
Order-in-Council	10.00
Manitoba Gazette	2.40

J. W. ARMSTRONG,

Provincial Secretary.

Dated at Winnipeg,

4th September, 1919.

New Brunswick.

(The Companies Act.)

3. The following is the Schedule of Fees payable under the 93rd section of the said Act:

- (1) When the proposed capital stock of the company is \$5,000 or less, the fee to be forty dollars (\$40).
- (2) When the proposed capital stock of the company is above \$5,000 and less than \$10,000, the fee to be fifty dollars (\$50).

- (3) When the proposed capital stock of the company is \$10,000 and less than \$25,000, the fee to be sixty-five dollars (\$65).
- (4) When the proposed capital stock of the company is \$25,000 and less than \$50,000, the fee to be eighty dollars (\$80).
- (5) When the proposed capital stock of the company is \$50,000 and less than \$100,000, the fee to be one hundred dollars (\$100).
- (6) When the proposed capital stock of the company is \$100,000 and less than \$200,000, the fee to be one hundred and fifty dollars (\$150).
- (7) When the proposed capital stock of the company is \$200,000 and less than \$300,000, the fee to be two hundred dollars (\$200).
- (8) When the proposed capital stock of the company is \$300,000 and less than \$500,000, the fee to be two hundred and fifty dollars (\$250).
- (9) When the proposed capital stock of the company is \$500,000 and not more than \$1,000,000, the fee to be three hundred dollars (\$300).
- (10) For every \$500,000, or any part thereof, in excess of \$1,000,000, an additional fee of sixty dollars (\$60).
- (11) On supplementary letters, when application is to increase the capital stock, the fees shall be payable upon the increased amount for which letters are applied for, according to the foregoing scale.

In all other cases a fee of \$50, but not to exceed the amount paid for original letters patent.

4. All fees must be paid in cash or by an accepted cheque, payable to the order of the Provincial Treasurer or Deputy Treasurer, and must be transmitted by registered letter.

ROBERT MURRAY.

Provincial Secretary's Office, Fredericton,
February 22nd, 1914.

Nova Scotia.

(Companies Act, 1920.)

The following, known as Table B, is the table of fees to be paid to the Registrar of Joint Stock Companies by a company having a capital divided into shares:

For registration of a company whose nominal share capital does not exceed \$5,000..... \$50 00

For registration of a company whose nominal share capital exceeds \$5,000, but does not exceed \$10,000.....	75 00
For registration of a company whose nominal share capital exceeds \$10,000, a fee of \$75, and also the following fees regulated according to the amount of nominal share capital, that is to say:	
For every one thousand dollars of nominal share capital or part of one thousand dollars after the first \$10,000 up to and including \$50,000	1 00
For every one thousand dollars of nominal share capital or part of one thousand dollars after the first \$50,000 up to and including \$100,000.....	75
For every one thousand dollars of nominal share capital or part of one thousand dollars after the first \$100,000 up to and including \$250,000.....	50
For every one thousand dollars nominal share capital or part of one thousand dollars after the first \$250,000 up to and including \$1,000,000	25
For every one thousand dollars of nominal share capital or part of one thousand dollars after the first \$1,000,000	15
For registration of any increase of capital made after the first registration of a company, the same fees as are payable for registering a new company with a nominal share capital amounting to the original share capital and proposed increased share capital of the first mentioned company, less the amount of the fee paid upon the original registration.	
For registration of any company under Part VII. of the Act the same fees as are payable in respect to a new company of the same nominal capital.	
For registering a change of a company's name.....	25 00
For registration of unlimited company as limited.....	10 00
For Order-in-Council sanctioning payment of interest out of capital	10 00
For any certificate other than the original certificate of incorporation	2 00
For filing any resolution re capital stock.....	3 00
For filing a special resolution	3 00
For filing order of Court confirming alteration of memorandum	5 00
For filing order of Court relating to any document.....	5 00
For registering copy of order and minute for reduction of capital	5 00
For registering any other document altering Memorandum of Association	3 00

For registering resolution distributing dividend or bonus.	5 00
For filing prospectus	3 00
For filing mortgage	3 00
For filing contract under section 82.....	3 00
For registering or filing any other document or notice...	2 00
For making any other record of any fact by law authorized or required to be recorded by the Registrar, but not including prescribed returns or the Memorandum of Association	2 00

FEES PAYABLE UNDER DOMESTIC, DOMINION AND FOREIGN CORPORATIONS ACT, CHAP. 15 (1912), AS AMENDED.

28. Every corporation holding a certificate of registration shall, in the month of January in each year, pay to the registrar a fee (in this part called an annual registration fee), as follows:

In the case of a Domestic Corporation or of a Dominion Corporation:—

Having a nominal capital not exceeding \$ 5,000, a fee of \$ 10.	
Having a nominal capital not exceeding 10,000, a fee of 20.	
Having a nominal capital not exceeding 25,000, a fee of 30.	
Having a nominal capital not exceeding 50,000, a fee of 50.	
Having a nominal capital not exceeding 75,000, a fee of 75.	
Having a nominal capital not exceeding 100,000, a fee of 100.	
Having a nominal capital not exceeding 250,000, a fee of 125.	
Having a nominal capital not exceeding 500,000, a fee of 150.	
Having a nominal capital not exceeding 1,000,000, a fee of 200.	
Having a nominal capital exceeding \$1,000,000, a fee of \$200 and ten cents for every \$1,000 of its nominal capital over \$1,000,000.	

In the case of a Foreign Corporation:—

Having a nominal capital not exceeding \$ 10,000, a fee of \$ 50.	
Having a nominal capital not exceeding 50,000, a fee of 100.	
Having a nominal capital not exceeding 100,000, a fee of 150.	
Having a nominal capital not exceeding 500,000, a fee of 200.	
Having a nominal capital exceeding \$500,000, a fee of \$200, and ten cents for every \$1,000 of its nominal capital over \$500,000.	

For the purpose of this section, the amount of the nominal capital of a corporation, the shares of which are issued without any nominal or par value, shall be deemed to be \$100 each per share.

EXCEPTIONS:

Provided, however, that with respect to a Dominion Corporation or to a Foreign Corporation having a nominal capital

exceeding \$500,000 and carrying on business in Nova Scotia heretofore, and carrying on also an established business outside of Nova Scotia in which at least fifty per cent. of its subscribed capital is invested, the Governor-in-Council may reduce the annual registration fee payable under this section to such sum as he may think just, having regard to the nature and importance of its business in Nova Scotia and the amount of capital used therein; provided also that with respect to such corporation not carrying on business in Nova Scotia heretofore when applying for registration under this Act the Governor-in-Council may reduce the annual registration fee to such sum as he may think just, having regard to the nature and importance of the business proposed to be carried on in Nova Scotia and the amount of capital proposed to be used therein. A corporation seeking a reduction of the fee under this section shall give to the Registrar such statement and information respecting its business and financial position as he may call for and shall verify the same in such manner as he may require.

If any such corporation makes default in paying any annual registration fee, that is due and payable by it as aforesaid, such corporation shall be liable to a penalty of double the amount of the annual registration fee.

Every corporation shall pay in addition the following fees:

For filing appointment of agent or change of name.....	\$ 2 00
For filing document or other notice other than the annual statement	2 00
For registering a change in name of a Dominion or Foreign Corporation	10 00

Saskatchewan.

ANNUAL FEES.

(Section 18, Corporations Taxation Act).

Companies with an authorized capital not exceeding \$25,000	\$ 10 00
Companies with an authorized capital exceeding \$25,000, but not exceeding \$50,000	20 00
Companies with an authorized capital exceeding \$50,000, but not exceeding \$100,000	40 00
Companies with an authorized capital exceeding \$100,000, but not exceeding \$250,000	50 00
Companies with an authorized capital exceeding \$250,000, twenty cents for every \$1,000 of capital, with a maximum fee of	500 00

LICENSE FEES.

(Section 27, Companies Act).

For every annual license for companies whose authorized capital does not exceed \$50,000.....	\$ 5 00
For every annual license for companies whose authorized capital exceeds \$50,000	10 00
For every annual license for mutual insurance companies	10 00

REGISTRATION FEES.

(Section 30, Companies Act).

For registration of a company whose nominal capital does not exceed \$20,000	\$40 00
For registration of a company whose nominal capital exceeds \$20,000, the above fee of.....	40 00
with the following additional fees regulated according to the amount of capital, that is to say:	
For every \$5,000 or part of \$5,000 after the first \$20,000 up to \$100,000	5 00
For every \$10,000 or part of \$10,000 after the first \$100,000 up to \$500,000	3 00
For every \$100,000 or part of \$100,000 thereafter.....	20 00
For registration of mutual companies and companies incorporated under section 22 of The Companies Act..	20 00

The fee for registering a company which did not become registered at the time when it commenced business in Saskatchewan shall be the sum total of the registration fee and the amount of Annual License and Annual Fees which would have been payable had the company become registered when it first commenced business in the province.

NOTE.—Sub-section 2 of section 30, as amended 1922, provides as follows:—"Where an extra-provincial company having nominal capital exceeding \$2,000,000 proves to the satisfaction of the registrar that it is actually carrying on an established business beyond Saskatchewan in which at least fifty per cent. of its subscribed capital is invested, the fee payable on registration shall not exceed \$540."

MISCELLANEOUS.

(Section 30, Companies Act).

For registration of any increase of capital made after the first registration of the company, the same additional fees as would have been payable if such increased capital had formed part of the original capital at the time these regulations came into force:

For registering change of name of company.....	\$ 5 00
For making a record of any fact authorized or required to be recorded by the registrar	1 00
For each search	25
For each abstract or copy of any document the sum of 10 cents for each 100 words or part of 100 words.	
For restoring name of company to register (in addition to all fees and taxes payable).....	10 00
January, 1921.	

NOTE.—The term “proposed or authorized capital” includes any increase thereto provided for in the company’s memorandum of association or charter, and where the memorandum or charter includes power to increase at any time the amount of the proposed or authorized capital the registration fee shall be levied on the maximum amount stated in the memorandum or charter.

Alberta.

THE COMPANIES ORDINANCE.

The following, known as Table B, is the table of fees to be paid to the Registrar by a company having a capital divided into shares:

For registration of a company whose nominal capital does not exceed \$20,000	\$50 00
For registration of a company whose nominal capital exceeds \$20,000, the above fee of \$50 with the follow- ing additional fees regulated according to the amount of capital, that is to say:	
For every \$5,000 or part of \$5,000 after the first \$20,000 up to \$100,000	5 00
For every \$10,000 or part of \$10,000 after the first \$100,000 up to \$500,000	3 00
For ever \$100,000 or part of \$100,000 thereafter.....	20 00
For registration of any increase of capital made after the first registration of the company, the same fees as would have been payable if such increased capital had formed part of the original capital at the time of registration	
For registering change of name of a company.....	5 00
For registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance, the same fee as is charged for registering a new company.	
For registering any document hereby required or auth- orized to be registered other than the memorandum of association	1 00

For making a record of any fact hereby authorized or required to be recorded by the registrar of a fee of..	1 00
Fees for each search	25
Fee for publishing the certificate of incorporation in The Alberta Gazette	5 00
Fee for filing articles of association.....	2 00

FOREIGN COMPANIES ORDINANCE, 1903.

The fees payable on registration, by extra-provincial companies, other than Dominion companies, are as follows:

Companies with capital not exceeding \$100,000.....	\$ 75 00
Companies with capital exceeding \$100,000, but not \$200,000	125 00
Companies with capital exceeding \$200,000, but not \$500,000	300 00
Companies with capital exceeding \$500,000, but not \$1,000,000	450 00
Companies with capital exceeding \$1,000,000, but not \$3,000,000	500 00
For every additional \$1,000,000 or part thereof over \$3,000,000, an additional \$100.	

NOTE:—Add \$5 for advertising.

British Columbia.

THIRD SCHEDULE.

(Section 257.)

FEES.

(a) Incorporation and Registration.

1. For incorporation of a company whose nominal share capital does not exceed \$10,000, a fee of..... \$ 25 00
2. For incorporation of a company whose nominal share capital exceeds \$10,000, the above fee of \$25, with the following additional fees, regulated according to the amount of nominal share capital, that is to say:—
 - For every \$5,000 of nominal share capital, or part of \$5,000, after the first \$10,000, up to \$25,000 \$5 00
 - For every \$5,000 of nominal share capital, or part of \$5,000, after the first \$25,000, up to \$500,000 2 50
 - For every \$5,000 of nominal share capital, or part of \$5,000, after the first \$500,000.. 1 25

3. For incorporation of a company not having a share capital whose number of members, as stated in the articles, does not exceed 20..... 25 00
4. For incorporation of a company not having a share capital whose number of members, as stated in the articles, exceeds 20, but does not exceed 100..... 50 00
5. For incorporation of a company not having a share capital whose number of members, as stated in the articles, exceeds 100, the above fee of \$50, with an additional \$5 for every 50 members or less number than 50 members after the first 100.
6. For registration of any extra-provincial company having a share capital, the same fees as are payable for incorporation under paragraphs 1 and 2.
 Provided that where the capital or part of the capital of the company is divided into shares having no nominal or par value, the fee for registration shall be calculated according to the sworn value of the gross assets of the company, after deducting therefrom the amount (if any) due by the company in respect of mortgages or debentures.
7. For registration of an extra-provincial company not having a share capital, the same fees as are payable for incorporation under paragraphs 3, 4 and 5.
8. In the case of an extra-provincial company having a nominal share capital exceeding \$450,000, or assets as aforesaid exceeding \$450,000, or more than 1,600 members, as the case may be, and which proves to the satisfaction of the Registrar that it is actually carrying on an established business beyond the Province in which at least 50 per cent. of its subscribed capital is invested, there shall be accepted in commutation of the fees prescribed by paragraphs 6 and 7, a fee of 250 00

(b) Increase of Capital or Members.

9. For an increase of share capital authorized after the incorporation of a company, the same fees per \$5,000 or part of \$5,000 as would have been payable under paragraph 2 if such increased capital had formed part of the original capital at the time of incorporation.
10. For any increase in the number of members authorized after the incorporation of a company not having a share capital, the same fees as would have been payable under paragraph 4 or 5, as the case

may be, if such increased number had been the number of members originally stated in the articles.

11. For any increase of share capital or assets as aforesaid, as the case may be, after registration of an extra-provincial company, the same fees as are payable for an increase of share capital under paragraph 9.
12. For any increase in the number of members made by an extra-provincial company not having a share capital after registration, the same fees as are payable for an increase of members under paragraph 10.
13. The provisions of paragraph 8 shall apply to any increase under paragraph 11 or 12.

(c) Conversion.

- | | |
|--|-------|
| 14. For conversion of a specially limited company into a company limited by shares..... | 2 50 |
| 15. For conversion of a company limited by shares into a specially limited company | 2 50 |
| 16. For conversion of a company specially incorporated in pursuance of Part VI. of the "Water Clauses Consolidation Act, 1897," into a company limited by shares | 10 00 |
| 17. For conversion of a company incorporated by special Act into a company limited by shares..... | 10 00 |
| 18. For conversion of a private company into a public company | 5 00 |
| 19. For conversion of a public company into a private company | 2 50 |

(d) Miscellaneous.

- | | |
|--|-------|
| 20. For registering or filing any document other than the memorandum | 1 00 |
| 21. For making a record of any fact hereby authorized or required to be recorded by the Registrar..... | 1 00 |
| 22. For application by an extra-provincial company for registration in lieu of filing fees | 2 50 |
| 23. For registration of a mortgage | 1 00 |
| 24. For restoration of a company or extra-provincial company struck off the register, in addition to filing fees | 10 00 |
| 25. For each and every search | 25 |
| 26. Publication in the Gazette, according to the scale of charges as defined in Schedule A of the "Statutes and Journals Act." | |

section 2, of the Companies Act, Revised Statutes of Canada, 1906, chapter 79, and Amending Acts.

Witness	Signature	Address	Description
Dated at	this	day of	, 192 .

FORM 4 (P. 24).

Consent to take and pay for Qualification Shares (Dominion Act).

To the Secretary of State of Canada:

I, the undersigned, having consented to act as director of _____ Limited, do hereby agree to take from the said company and pay for one share of a par value of \$ _____, being the prescribed number of qualification shares for the office of director of the company.

Witness	Signature	Address	Description
Dated at	this	day of	, 192 .

FORM 5 (P. 26).

Notice of Situation of Registered Office.

The _____ Company, Limited.

To the Registrar of Companies:

Notice is hereby given that the registered office of The _____ Company, Limited, is situate at _____ in _____, Province of _____.

Dated this _____ day of _____ 192 .

 Secretary.

FORM 6 (PP. 27, 108).

Agreement for Sale of Business to a Company.

Memorandum of agreement made this _____ day of _____, 192 , between A.B., of _____ (hereinafter called the Vendor), of the one part, and _____ Limited hereinafter called the Company) of the other part.

Whereas the Vendor is carrying on the business of manufacturer of _____ under the firm name of "A. B. & Company" at _____ ;

And whereas the Company was, on the _____ day of _____, 192____, duly incorporated with authorized capital of \$40,000, divided into 400 shares of \$100 each;

Now it is hereby agreed as follows:—

1. The Vendor sells and the Company purchases:

(a) The goodwill of the said business and the exclusive right to use the name of A.B. as part of the name of the Company.

(b) All the lands, buildings, plant, machinery, office furniture, stock-in-trade, chattels, goods, effects and things in or about the premises of the Vendor and used in connection with the said business.

(c) The moneys, bills, notes and other negotiable instruments, book and other debts of the Vendor in the said business and all the Vendor's rights, claims and securities in respect of the said debts, and the benefit of all contracts and engagements to which the Vendor is entitled in connection with the said business.

(d) All other property and assets, if any, of the Vendor in connection with the said business.

2. As part of the consideration for the said sale, the Company shall undertake, pay, satisfy, discharge, perform and fulfill all debts, liabilities, contracts and engagements of the Vendor in connection with the said business, and shall indemnify the Vendor, his heirs, executors and administrators against all actions, proceedings, claims and demands in respect thereof.

3. As a further part of the consideration for the said sale, the Company shall allot to the Vendor or his nominees 150 fully paid shares of the capital of the Company of \$100 each.

4. The said sale shall take effect as from the date hereof and the vendor shall from the date hereof be deemed to be carrying on the said business on behalf of the Company and shall account to the Company and be indemnified accordingly.

5. The Company shall pay all costs, charges and expenses incurred by the Vendor or the Company of and incidental to the incorporation and organization of the company and negotiations preliminary thereto, including the preparation and completion of this agreement and carrying of same into effect.

6. The said sale shall be completed on or before the _____ day of _____ next, when the said shares shall be allotted and share certificates issued.

7. These presents are intended to and shall operate as an actual transfer of the property hereby agreed to be sold, but the Vendor shall do, sign and execute all deeds, documents, matters

and things which are convenient or necessary or which counsel may advise, for more completely and effectually carrying out the intention of these presents and for vesting in the Company the property comprised in this agreement.

[7. This agreement is conditional on the Company becoming entitled to commence business, and in the event of its not becoming so entitled before the day of next, either party by notice in writing to the other may rescind this agreement.]

In witness whereof the Vendor has hereunto set his hand and seal and the Company has executed this agreement under its corporate seal, the day and year first above written.

.....Limited.

(Corporate seal)

.....

Secretary.

.....

President.

FORM 7 (P. 85).

By-law creating Preference Shares.

..... Limited.

By-law No. .

Creating \$200,000 Par Value 8 Per Cent, Cumulative Preference Shares.

Whereas it is deemed advisable that 2,000 shares of the capital stock of the Company of the par value of \$100 each, aggregating \$200,000 par value, be created and issued as preference shares with the rights and limitations thereto attaching as hereinafter set forth;

NOW THEREFORE BE IT ENACTED as a by-law of , Limited, that 2,000 shares of the capital stock of the Company of the par value of \$100 each, aggregating \$200,000 par value, be and the same are hereby declared to be and are created preference shares and the same shall be issued and allotted by the directors from time to time as they may determine and the allottees and any subsequent holders thereof shall respectively be entitled to receive the dividends and shall hold the said shares upon the terms and conditions and with the rights, privileges, preferences, restrictions and qualifications thereof following:—

1. The holders of the said preference shares shall be entitled to and shall receive half-yearly on the first days of January and July in each year as and when declared by the Board of Directors cumulative dividends on the amount paid up on their shares at the rate of eight per cent. per annum out of the surplus profits of the Company in preference to and with priority over any payment of dividend upon the common shares of the Company.

2. Except as otherwise expressly by law or herein provided, the holders of the said preference shares shall have no right to vote for the election of directors or for any other purpose or to receive notice of any meeting of shareholders so long as the Company shall not be in default in payment of dividend as hereinafter provided. Anything herein contained to the contrary notwithstanding in case and whenever the Company shall remain in default in payment of the dividend on the said preference shares for a period of sixty days, the holders of the said preference shares shall be entitled to receive notice of all meetings and as a class shall have equal voting power with the holders of the common shares as a class while such default continues.

3. In the event of the voluntary liquidation, dissolution or winding-up of the Company or upon any voluntary distribution of the capital assets the holders of the said preference shares (before any distribution is made to the holders of common shares) shall be entitled to receive an amount equal to 110 per cent. of the par value thereof and any unpaid dividends accumulated thereon and no more; and on any other distribution of capital assets the holders of the said preference shares (before any distribution is made to the holders of common shares) shall be entitled to receive an amount equal to 100 per cent. of the par value thereof and unpaid dividends accumulated thereon and no more. The holders of the said preference shares shall have no pre-emptive right in or right to subscribe for any additional shares of any class which may hereafter be issued by the Company.

4. The Company shall not, so long as any of the preference shares hereby created shall remain outstanding, except with the consent and approval of the holders of at least 60 per cent. in value of the said preference shares then outstanding given at a meeting specially called for the purpose:—

(a) Authorize or create any other or additional preference shares ranking in priority to or on a parity with the preference shares hereby created;

(b) Create any mortgage, lien or encumbrance of any kind on any part of the real estate, machinery or fixed assets of the Company [or authorize or issue any bond debenture or other

evidence of indebtedness secured thereon]. This prohibition shall not be deemed to prevent nor shall it operate to prevent the giving of purchase money, mortgages or other purchase money, liens on property to be hereafter acquired by the Company nor the acquisition of property subject to mortgages, liens or encumbrances thereon then existing, nor the giving of mortgages, charges, assignments, liens or other securities created in favor of bankers in the ordinary course of the Company's business and for the purpose of carrying on the same;

(c) Sell or otherwise dispose of by conveyance, transfer, lease or otherwise the whole [or any material portion] of the Company's assets and undertaking unless the proceeds of such sale or disposal shall be sufficient to enable the Company to pay, and unless the Company shall pay out of such proceeds all the holders of the said preference shares then outstanding 110 per cent. of par plus any unpaid dividends accumulated thereon.

5. Subject to confirmation by supplementary letters patent the directors of the Company may from time to time pass a by-law whereby the terms hereof and of the foregoing paragraphs may be altered, amended or repealed or the application thereof suspended in any particular case and changes made in the rights, preferences, privileges, restrictions and qualifications attaching to the said preference shares, but such by-law shall be confirmed by the vote at a meeting specially called for the purpose of the holders of at least 60 per cent. in value of the preference shares hereby created and then outstanding, and of at least 60 per cent. in value of the common shares then outstanding [provided that the right of any holder of the said preference shares to receive cumulative preferential dividends at the rate aforesaid and to payment on any distribution of capital assets upon the terms aforesaid shall not be taken away without his consent].

Passed by the directors this day of , 192 .

Witness the corporate seal of the Company. (Corporate seal).

.....

.....

Secretary.

President.

Confirmed by the shareholders this day of , 192 .

Witness the corporate seal of the Company. (Corporate seal).

.....

.....

Secretary.

President.

FORM 8 (PP. 92, 105).

Preference Share Certificate (Companies Incorporated by Letters Patent).

No.....

.....Shares.

The Company, Limited.

Incorporated under the Companies Act.

Authorized share capital \$400,000, divided into 2,000 eight per cent. cumulative preference shares of \$100 each and 2,000 common shares of \$100 each.

This is to certify that is the owner of fully paid and non-assessable eight per cent. cumulative preference shares of the Company, Limited, of the par value of one hundred dollars each, transferable in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed.

The rights, preferences, privileges and restrictions or limitations, respectively attaching to the eight per cent. cumulative preference shares are set forth in full in the statement on the reverse of this Certificate, and the holder hereof, by accepting this Certificate, assents to and is bound by the provisions set forth in the said statement. (1)

Witness the seal of the said Company and the signature of its duly authorized officers this (date of issuance). (Corporate seal). The Company, Limited.

.....
Secretary.

.....
President.

(1) If there are a transfer agent and a registrar, add: "This certificate is not valid until countersigned by the transfer agent and registrar;" and, in the margin,

"Registered,
The Corporation,
Registrar,
by
Transfer Officer."

"Countersigned,
The Corporation, Limited,
Transfer Agent,
by
Transfer Officer."

FORM 9 (PP. 92, 105).

Preference Share Certificate (Companies Incorporated by Registration).

No.....Shares.

The Company, Limited.

Incorporated under the Companies Act.

Authorized share capital, \$400,000, divided into 2,000 eight per cent. cumulative preference shares of \$100 each and 2,000 common shares of \$100 each.

This is to certify that is the holder of fully paid and non-assessable eight per cent. cumulative preference shares of the Company, Limited, of the par value of one hundred dollars each, numbered to inclusive, transferable in person or by duly authorized attorney upon surrender of this certificate properly endorsed.

Witness, etc.

FORM 10 (P. 94).

No Par Value Share Certificate.

No.....Shares.

Limited.

Incorporated under the Dominion Companies Act.

Capital stock, 60,000 shares, without nominal or par value.

This is to certify that is the owner of fully paid and non-assessable shares in the capital stock of , Limited, transferable only on the books of the Company by the holder hereof in person or by duly authorized attorney, upon surrender of this certificate properly endorsed.

In witness whereof the said Company has caused its corporate seal to be affixed hereto and this certificate to be signed by its President and Secretary this day of 192 .

For Limited.

(Corporate seal).

.....
Secretary......
President.

FORM 11 (P. 100).

Application for Shares.

To _____ Limited, and
the directors thereof.

I hand you herewith the sum of \$100, being a deposit of \$10 per share on 10 eight per cent, cumulative preference shares of \$100 each in the above named company, and request you to allot to me that number of said shares upon the terms of the company's prospectus dated May 23rd, 1921, and I hereby agree to accept the same or any smaller number that may be allotted to me, and to pay the further instalments as provided by and at the dates specified in the said prospectus, and I authorize you to register me as the holder of the said shares.

Ordinary signature.

Name in full.

Address.

Description.

Date, _____, 192 .

Witness.

FORM 12 (P. 100).

Receipt.

Received from _____ the sum of \$ _____, being
a deposit of \$10 per shares on application for _____
cent. cumulative preference shares in the capital of _____
Limited.

Dated at Toronto this _____ day of _____ 192 .

For _____ Limited.

.....
Treasurer.

FORM 13 (PP. 100, 102).

Letter of Allotment.

_____ Limited.

(Address).

To
Sir:—

In reply to your application for shares, I am instructed to inform you that the directors have allotted you 10 shares of

\$100 each in this Company. The total amount payable on application and allotment is \$500. You have paid on application \$100, leaving still to be paid by you \$400, which sum I have to request that you will remit to the Company at the above address on or before May 22nd next.

.....
Secretary.

FORM 14 (P. 102).

Resolution of Directors Allotting Shares.

Be it resolved that shares be allotted to the persons under-mentioned, in the amounts set opposite each respective name:—

Name of allottee.	Number of shares.	*Denoting numbers.
A.B.	10	1-10
C.D.	40	11-50
&c.		

* This column to be used in provinces where shares required to be numbered.

And that the Secretary is directed to give notice of allotment to each of the above named persons.

FORM 15 (P. 104).

Return of Allotments.

The	Company, Limited.
Made pursuant to section	of the (specify Act).
*Number of the	shares allotted payable in cash. .
Number of the	shares allotted payable in cash. .
*Nominal amount of the	shares so allotted....\$.
Nominal amount of the	shares so allotted....\$.
*Amount paid or due and payable on each such	
share.\$.
Amount paid or due and payable on each such	
share.\$.
*Number of the	shares allotted for a considera-
tion other than cash\$.
Number of the	shares allotted for a considera-
tion other than cash\$.
*Nominal amount of the	shares so allotted....\$.
Nominal amount of the	shares so allotted....\$.
*Amount to be treated as paid on each such	share \$.

* Distinguish between different classes of shares, *e.g.*, preference, common, etc.

Amount to be treated as paid on each such share \$.
 The consideration for which such (and)
 shares have been allotted is as follows:—

(Here insert short particulars).

Names, addresses and descriptions of the allottees.

(Here insert particulars in tabular form under headings, date of allotment, full name, address and description of allottee, number of shares allotted with sub-headings for different classes of shares).

A contract in writing dated , 192 , constituting the title of the allottee(s) to the allotment of the above shares allotted for a consideration other than cash is filed herewith.

Dated this day of , 192 .

(Signature)

(Relationship to Company)

NOTE.—In British Columbia, a different form of return, viz., Form 17 in the Schedule to the Act, is required.

FORM 16 (P. 105).

Common Share Certificate.

No..... Shares.

The

Company, Limited.

Incorporated under the Companies Act.

Authorized share capital \$500,000, divided into 5,000 shares of \$100 each.

This is to certify that is the owner of fully paid and non-assessable shares of \$100 each of The Company, Limited, transferable only on the books of the Company in person or by attorney on surrender of this certificate properly endorsed.

In witness whereof the Company has caused this certificate to be signed by its duly authorized officers and its corporate seal to be hereunto affixed this day of , 192 .

(Corporate seal)

.....

Secretary.

.....

President.

FORM 17 (P. 122).

Resolution of Directors Making a Call.

That a call of \$ _____ per share be and the same is hereby made payable in respect of the amount unpaid on the shares of the Company, and that such call be payable on the _____ day of _____, 192____, to the Company at the head office, _____ (address).

FORM 18 (P. 123).

Notice of Call.

The _____ Company, Limited.
(Address and Date).

Sir:—

I have to notify you that the directors of this Company have made a call upon the shareholders of the Company of \$ _____ in respect of each of the shares held by them. Such call is payable to the Company at the head office, (address) on the _____ day of _____, 192____.

As the holder of _____ shares the amount payable by you in respect of such call is \$ _____. All cheques should be made payable to the Company, at par, Toronto. In the event of non-payment, the shares in respect of which such call was made will be liable to be forfeited.

Yours faithfully,

.....
Secretary.

To

Name and address
of shareholder.

FORM 19 (P. 124).

Notice of Intended Forfeiture.

Sir:—

In my letter of _____, 192____, I gave you notice that at a meeting of the directors held on the _____ day of _____, 192____, a call was made of \$ _____ per share on the holders of shares in this Company in respect of the amounts unpaid thereon.

I am now instructed to inform you that the directors require you, on or before the _____ day of _____, 192____, to pay this amount, [together with interest at the rate of six per cent. per annum from the said _____ day of _____, 192____ (the date when the said call became payable), up to the date of payment], to the Company at the head office (address). In the event of non-payment of the said call [and interest] on or before the said _____ day of _____, 192____, at the place aforesaid, the shares in respect of which such call was made will be liable to be forfeited.

Yours faithfully,

.....

Secretary.

To

Name and address
of shareholder.

FORM 20 (P. 124).

Resolution for Forfeiture.

That _____, the holder of _____ shares of \$ _____ each [numbered _____ to _____ inclusive] having failed to pay the call of \$ _____ per share made _____, 192____, and having failed to comply with the notice served upon him, dated _____, 192____, the said shares be and the same are hereby forfeited.

FORM 21 (P. 129).

Form of Transfer Endorsed on Share Certificate.

For value received _____ hereby sell, assign and transfer unto _____, _____ shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint _____ Attorney to transfer the said shares on the books of the within-named Company, with full power of substitution in the premises.

Dated _____, 192____.

In the presence of _____

Notice.—The signature of the assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement, or any change whatever.

FORM 22 P. (129).

Common Form of Transfer of Shares.

I, _____, in consideration of the sum of _____ paid to me by _____ (hereinafter called "the said transferee"), do hereby transfer to the said transferee shares numbered _____ to _____ in the undertaking called _____, Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the transferee, do hereby agree to take the said shares subject to the conditions aforesaid.

As witness our hands and seals this _____ day of _____, 192 _____.

Signed sealed and delivered by the above-named _____ in the presence of _____ (seal)

Witness: Signature.
Address.
Occupation.

Signed sealed and delivered by the above-named _____ in the presence of _____ (seal)

Witness: Signature.
Address.
Occupation.

FORM 23 (PP. 163, 168).

Notice of Annual Meeting.

The _____ Company, Limited.

Notice is hereby given that the annual meeting of the shareholders of the above Company will be held at the head office of the Company, No _____ Street, Toronto, on Saturday, June 4th, 1921, at the hour of 12 noon, for the purpose of receiving and considering the annual statement of accounts and balance sheet and the report of the directors and auditors thereon; for the election of directors and other officers; and also for the transaction of any and all business that may come before the meeting.

If you are not able to be present, kindly sign and return the enclosed proxy.

Dated at Toronto, May 27th, 1921.

By order of the Board.

.....
Secretary.

FORM 24 (PP. 165, 168).

Notice of Special General Meeting.

The _____ Company, Limited.

Take notice that a special general meeting of the shareholders of the above Company will be held at Room _____, Building, in the City of Toronto, on Tuesday, June 14th, 1921, at the hour of 12 o'clock noon, for the purpose of considering and, if approved, confirming with or without modification:

1. By-law No. 5, passed by the directors on the 14th day of April, 1921, increasing the number of directors of the Company from five to seven.

2. By-law No. 6, passed by the directors on the 14th day of April, 1921, authorizing the borrowing of money from the Bank.

3. By-law No. 7, passed by the directors on the 25th day of May, 1921, authorizing the amendment of the trust deed, dated the 1st day of January, 1919, and made between the Company and _____ Trust Company Limited so as to provide—

(set out briefly the effect of the provisions)

and authorizing the execution of a supplemental trust deed providing for such amendment; and further, to transact such other business as may come before the meeting.

Dated at Toronto this 1st day of June, 1921.

By order of the Board.

.....
Secretary.

FORM 25 (PP. 166, 168).

Notice of Ordinary General Meeting (Companies Incorporated by Registration).

The _____ Company, Limited.

Notice is hereby given that the Second Ordinary General Meeting of the above Company will be held at the registered office of the Company, No. _____, Street, Calgary, Alberta, on _____ day the _____ day of _____, 1921, at _____ o'clock in the _____ noon, for the purpose of receiving and considering the annual statement of accounts and balance sheet and the report of the directors and auditors thereon; for the election of directors; for the appointment of

auditors; to sanction the declaration of a dividend; and to transact the other ordinary business of the Company.

Notice is also given that the transfer books and register of members will be closed from the _____ day of _____ to the _____ day of _____, both days inclusive.

Dated this _____ day of _____, 192 .

By order of the Board.

.....
Secretary.

FORM 26 (PP. 168, 179).

Unconditional Notice of two Meetings to Pass and Confirm a Special Resolution.

The _____ Company, Limited.

Notice is hereby given that an extraordinary general meeting of the Company will be held at _____ on the _____ day of June, 192 , at _____ o'clock in the _____ noon, when the subjoined resolution will be proposed:—
(Set out resolution).

Notice is hereby also given that an extraordinary general meeting of the Company will be held at _____ on the _____ day of July, 192 , at _____ o'clock in the _____ noon, when a report will be presented of the proceedings at the extraordinary general meeting of the Company to be held on the _____ day of June, 192 , when the above resolution will, if passed by the requisite majority at that meeting, be submitted for confirmation as a special resolution.

Should the said resolution not be passed by the requisite majority at the meeting to be held on the _____ day of June, 192 , due notice will be given to the members that the meeting on the _____ day of July, 192 , of which notice is now given, will not be held.

Dated this _____ day of _____, 192 .

By order of the Board.

.....
Secretary.

FORM 27 (PP. 173, 175).

Proxy.

The _____ Company, Limited.

I, _____, of _____, a shareholder of The _____ Company, Limited, do hereby appoint _____ of _____, and either of them, as my proxy, to vote for me and on my

behalf at the (annual or special as the case may be) general meeting of the Company to be held on the _____ day of _____, 192____, and at any adjournment thereof.

Dated at _____ this _____ day of _____, 1921.

.....
Signature of shareholder.

Witness:

.....
Signature of witness.

FORM 28 (P. 174).

Proxy (Ontario, Form 6).

I, _____, of _____ Company, Limited, _____, a shareholder of _____ Company, Limited, hereby appoint _____ (*naming the proxy*) as my proxy to vote for me and on my behalf at the _____ meeting of the Company, to be held on the _____ day of _____, 19____, and at any adjournment thereof.

Dated this _____ day of _____, 19____.

Note.—

(1) Where the appointer is a corporation or an officer of it the necessary changes must be made in the form.

(2) Where the instrument is signed by a corporation its common seal must be affixed.

FORM 29 (P. 183).

By-law for Borrowing Money.

BE IT ENACTED as a by-law of the Company, that:—

1. The Directors may from time to time borrow money upon the credit of the company; limit or increase the amount to be borrowed; hypothecate, mortgage or pledge the real or personal property of the Company, or both, and give promises and agreements to give security to secure any money borrowed for the purposes of the Company; also, may give additional security at any time for any money borrowed or remaining due by the Company.*

* Para. 1 may be adapted to follow the wording of the Companies Act which applies, *e.g.*

- (b) Issue bonds, debentures, debenture stock, both perpetual and terminable, or other securities;
- (c) Pledge or sell such bonds, debentures or debenture stock, or other securities for such sum and at such prices as may be expedient or be necessary.

The Directors may charge, hypothecate, mortgage or pledge any or all of the real or personal property, including book debts and unpaid calls, rights and powers, undertaking and franchises, of the Company to secure any bonds, debentures, debenture stock or other securities, or any liability of the Company.

FORM 30 (P. 184).

Borrowing Resolution.

Be it resolved:

That the members of the Company in general meeting assembled hereby sanction the exercise by the Company of all and every power to borrow money and to secure repayment thereof which is conferred upon it by The Companies Act.

Without limiting the generality of the foregoing provision, Be it further resolved, that:

1, 2, 3, 4 (paragraphs 1-4 of Form 29).

FORM 31 (PP. 183, 184).

Banking and Signing Officers' Resolution.

....., Limited.

Resolved:

1. That (specify officers, *e.g.*, the President or Vice-President and Secretary or Treasurer) be and hereby authorized on behalf of the Company, as moneys may be required by the Company, to apply to any person, persons, firm, company, bank or banker, to advance the same on the Company's credit; to make arrangements as to the terms and conditions of the loan thereof and as to the securities to be given therefor; and from time to time to vary or modify such arrangements, terms and conditions; that any of the above hereby empowered on behalf of the Company to sign and deliver from time to time for the moneys so borrowed such agreements, securities, promises to give security, hypothecations and pledges as may be required by lenders of such moneys, also such additional

securities by way of mortgage as the Directors may from time to time authorize.

2. That (specify officers, *e.g.*, the President or Vice-President and Secretary or Treasurer) be and _____ hereby authorized on behalf of the Company to draw, accept, sign, make and agree to pay all or any bills of exchange, promissory notes, cheques and orders for the payment of money; also to execute either special or general waivers of presentment, protest and notice of dishonor of any and all cheques, bills or notes now or hereafter discounted or deposited for any purpose by the Company with any bank or banker, or to which they are parties, or in which they are in any way interested; also to arrange, settle, balance and certify all books and accounts between the Company and its bankers and to receive all paid cheques and vouchers and to sign the form of settlement of balances and release, required by the Company's bankers.

3. That (specify officers, *e.g.*, the President or Vice-President or Secretary or Treasurer) be and _____ hereby authorized on behalf of the Company to negotiate with, deposit with or transfer to the Company's bankers (but for credit of the Company's account only), all or any bills of exchange, promissory notes, cheques or orders for the payment of money and other negotiable paper, and for the said purpose to endorse the same on behalf of the Company.

4. That all documents, securities and other negotiable instruments, signed, made, drawn, accepted or endorsed as aforesaid shall be valid and binding upon the Company.

5. That the Company's bankers be furnished with a list of the names of the Directors, Secretary and other officers of the Company authorized to sign for it, together with specimens of their signatures, and that the Company's bankers be from time to time informed in writing of any change of such officers.

6. That this resolution be communicated to the Company's bankers and remain in force until notice in writing to the contrary is given to them and receipt of such notice acknowledged by it.

FORM 32 (P. 215).

By-law Changing Head Office.

The

Company, Limited.

By-law No. _____

Whereas the head office of The _____ Company,
Limited, now is at the _____ of _____, in the County
of _____ and Province of _____;

And whereas it has been deemed expedient that the same should be changed to the _____ of _____ in the said Province;

Therefore The _____ Company, Limited, enacts as follows:

1. That the head office of The _____ Company, Limited, be and the same is hereby changed from the _____ of _____ to the _____ of _____.

2. That this by-law be submitted with all due despatch for the sanction of the shareholders of the Company at a general meeting thereof to be called for considering the same.

Enacted this _____ day of _____, 192 .
(Corporate seal)

.....
President.

.....
Secretary.

NOTE.—If the Company is incorporated under the Dominion or New Brunswick Act read “chief place of business in Canada” for “head office” in the above form.

FORM 33 (P. 249).

Notice of Increase of Capital.

The _____ Company, Limited.
To the Registrar of Joint Stock Companies.

The above-named Company hereby gives you notice, in accordance with section _____ (specify number) of the (specify Act) that (1) by a resolution of the Company dated the _____ day of _____ 192 , the nominal capital of the company has been increased from \$100,000, divided into 1,000 shares of \$100 each, to \$200,000, by the creation of 1,000 new shares of \$100 each.

Dated at _____, this _____ day of _____, 192 .

.....
Secretary.

(1) If the capital has been increased by special resolution, read “by special resolution of the company duly passed and confirmed at extraordinary general meetings thereof held respectively on the _____ day of _____ and the _____ day of _____, 192 .”

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